

A. GA Dept of Labor Transcript



GEORGIA DEPARTMENT OF LABOR

148 ANDREW YOUNG INTERNATIONAL BLVD., NE • ATLANTA, GEORGIA 30303-1751

MARK. BUTLER
COMMISSIONER

July 29, 2011

VIA HAND DELIVERY

Ms. Amy E. Barnes
886 Wanda Circle, S.W.
Marietta, Georgia 30088

**RE: Request for Unemployment Appeal Hearing Transcript
Docket #23437-11 | Amy E. Barnes v. Publix Super Markets**

Dear Ms. Barnes:

Enclosed is a copy of a transcript from the above-referenced unemployment insurance appeal hearing, conducted on June 27, 2011, which the Georgia Department of Labor may disclose pursuant to O.C.G.A. § 34-8-121(b)(3).

Sincerely,

A handwritten signature in black ink, appearing to read "Shari N. Speer", is written over a circular stamp.

Shari N. Speer
Legal Services/Disclosure Officer
UI Legal Section

BOARD OF REVIEW
EMPLOYMENT SECURITY AGENCY
STATE OF GEORGIA

IN RE: CLAIM OF:)
)
AMY E. BARNES) DOCKET NO. 23437(11)
886 WANDA CIRCLE SOUTHWEST)
MARIETTA, GA 30088)

HEARING CONDUCTED BY HON. JOHN A. MCDUFFIE,
ADMINISTRATIVE HEARING OFFICER, GEORGIA DEPARTMENT
OF LABOR, COMMENCING JUNE 13, 2011.

APPEARANCES:

ON BEHALF OF THE CLAIMANT: AMY E. BARNES
JOHN GALCZYNSKI, REPRESENTATIVE
CELIO BEST, INTERPRETER

ON BEHALF OF THE EMPLOYER: KELLY CHARLES-COLLINS, SENIOR
HUMAN RESOURCE INVESTIGATOR
THOMAS SAYERS, STORE MANAGER
KEVIN KIDD, ASSISTANT STORE MANAGER

TRANSCRIBED BY S. WATERS, CORPORATE SUPPORT, JULY 26, 2011.

1 HEARING OFFICER: Andy McDuffie,
2 Administrative Hearing Officer, it's
3 12:58 p.m. for Docket 23437. Claimant Appeal,
4 June 13th, 2011. Going to check the lobby for
5 the parties.

6 Parties are all in the lobby. The
7 Sign Language Interpreter is not here yet.
8 Andy McDuffie, Administrative Hearing,
9 Docket Number 23437, Claimant Appeal.

10 Today is June 27th, 2011, the time is now
11 12:55 p.m. I'm going to go to the lobby to
12 check the lobby for the parties. Come on in
13 and have a seat, please.

14 Um sir, if you'll just sit here and let
15 Ms. Barnes sit in the middle. The
16 Sign Language Interpreter can sit right there
17 I think -- do you need to sit right across
18 from her?

19 INTERPRETER CELIO BEST: You'll be
20 leading the meeting?

21 HEARING OFFICER: I'll be holding the
22 hearing, sir.

23 INTERPRETER CELIO BEST: Kind of where
24 she can see you and hear --

25 HEARING OFFICER: If she's got -- you

1 need her to sit there?

2 INTERPRETER CELIO BEST: I can sit across
3 from here.

4 HEARING OFFICER: Well, could you sit --
5 will it work if she sits right there?

6 INTERPRETER CELIO BEST: The person who
7 is talking --

8 AMY E. BARNES: That's where I sat --

9 HEARING OFFICER: Sit right there, sir.

10 INTERPRETER CELIO BEST: Thank you.

11 HEARING OFFICER: Sit there, and, ma'am,
12 you're the Employer Representative, if you'll
13 have a seat there, please. One of you will be
14 right -- okay.

15 INTERPRETER CELIO BEST: She says she
16 would prefer me sit right here.

17 HEARING OFFICER: Okay, well, sir, you
18 sit over there and the Employer sit on that
19 side.

20 It's 1:02 p.m. Okay, so you're the
21 Interpreter, your first name, please? I need
22 your name, sir? I've got to put you under
23 oath before we do anything --

24 INTERPRETER CELIO BEST: Okay.

25 HEARING OFFICER: -- so I need you to

1 tell me your name, please?

2 INTERPRETER CELIO BEST: Oh, I'm sorry my
3 name is Celio Best --

4 HEARING OFFICER: Okay.

5 INTERPRETER CELIO BEST: --
6 C-E-L-I-O B-E-S-T.

7 HEARING OFFICER: Okay, and do you
8 solemnly swear or affirm that you will
9 truthfully, um do sign language, translate and
10 interpret what's being said in this hearing to
11 the best of your ability so help you God?

12 INTERPRETER CELIO BEST: I do.

13 HEARING OFFICER: Okay -- okay, and,
14 ma'am, I want you to interpret in first person
15 everything that I say and everything that's
16 said for her. Ma'am, you're the Employer
17 representative, your name?

18 KELLY CHARLES-COLLINS: Kelly, K-E-L-L-Y
19 my last name is hyphenated it's
20 Charles-Collins.

21 HEARING OFFICER: And your title with the
22 company?

23 KELLY CHARLES-COLLINS:
24 Senior Human Resources Investigator.

25 HEARING OFFICER: Okay, and your name?

1 THOMAS SAYERS: Thomas Sayers,

2 S-A-Y --

3 HEARING OFFICER: S-A-Y?

4 THOMAS SAYERS: -- E-R-S.

5 HEARING OFFICER: E-R-S?

6 THOMAS SAYERS: Correct.

7 HEARING OFFICER: Your title with the
8 company?

9 THOMAS SAYERS: Store Manager.

10 HEARING OFFICER: And your name, sir?

11 KEVIN MURPHY: Kevin Murphy, M-U-R-P-H-Y.

12 HEARING OFFICER: And your title?

13 KEVIN MURPHY: Regional Director.

14 HEARING OFFICER: Okay, and the -- the
15 other witnesses you plan to call today in this
16 hearing, ma'am, that are out there?

17 KELLY CHARLES-COLLINS: Um Kevin Kidd.

18 HEARING OFFICER: K-I-D-D?

19 KELLY CHARLES-COLLINS: Uh-hmm he's the
20 Assistant Store Manager.

21 HEARING OFFICER: And these are witnesses
22 you plan to call right --

23 INTERPRETER CELIO BEST: Okay, work with
24 me, Kevin, work with me? I'm speaking for
25 her.

1 HEARING OFFICER: Oh, okay -- okay, uh
2 well, let me right now just get the witness
3 list that they plan to call then, I'll get
4 yours as well. These are witnesses you plan
5 to call, is that correct?

6 KELLY CHARLES-COLLINS: Uh-hmm.

7 HEARING OFFICER: Okay, the next witness?

8 KELLY CHARLES-COLLINS: Patty Simmons.

9 HEARING OFFICER: And what's her title
10 with the company?

11 KELLY CHARLES-COLLINS:
12 Customer Service Manager.

13 HEARING OFFICER: And the next witness?

14 KELLY CHARLES-COLLINS: Matt Crawley,
15 C-R-A-W-L-E-Y.

16 HEARING OFFICER: And his title?

17 KELLY CHARLES-COLLINS: District Manager.

18 HEARING OFFICER: Okay, and, Ms. Barnes,
19 do you plan on calling any witnesses today in
20 this hearing?

21 JOHN GALCZYNSKI: I'm going to be her
22 representative --

23 HEARING OFFICER: Oh, you're the
24 representative, okay, sir, your name?

25 JOHN GALCZYNSKI: My name is

1 John Galczynski.

2 INTERPRETER CELIO BEST: Say it again?

3 JOHN GALCZYNSKI: G-A-L-C-Z-Y-N-S-K-I.

4 HEARING OFFICER: Wait, uh G-A --

5 JOHN GALCZYNSKI: L, G-A-L Charlie,

6 Delta, Member --

7 HEARING OFFICER: Okay, start from the

8 beginning, sir --

9 JOHN GALCZYNSKI: Okay.

10 HEARING OFFICER: -- I have G-A-L-Z-Z --

11 JOHN GALCZYNSKI: No, Charlie, C.

12 HEARING OFFICER: Oh, okay, C-A-L --

13 JOHN GALCZYNSKI: No, G.

14 HEARING OFFICER: That's' what I just had

15 and you said it was wrong. Okay, for her,

16 sir.

17 JOHN GALCZYNSKI: G-A-L --

18 HEARING OFFICER: Okay, stop, no, sir,

19 let's just stop and -- and go through this.

20 JOHN GALCZYNSKI: Okay.

21 HEARING OFFICER: G-A-L-Z-Z-Y, is that

22 correct?

23 JOHN GALCZYNSKI: No -- no, that is not,

24 G-A-L-C-Z-Y-N-S-K-I.

25 HEARING OFFICER: Okay,

1 G-A-L-C-Z-Y-N-S-K-Y, is that correct?

2 JOHN GALCZYNSKI: N-S-K-I.

3 HEARING OFFICER: Okay, and your first
4 name, sir, is John?

5 JOHN GALCZYNSKI: John.

6 HEARING OFFICER: And you're their
7 representative, is that correct?

8 JOHN GALCZYNSKI: That's correct.

9 HEARING OFFICER: Okay, and what
10 witnesses do y'all plan calling today in this
11 hearing?

12 JOHN GALCZYNSKI: Um there is a list
13 which I believe you should already have it
14 overlaps with the list that's, uh Counsel for
15 Publix has, um --

16 HEARING OFFICER: Are there any
17 additional witnesses that the Employer --

18 JOHN GALCZYNSKI: Yes, there is, um
19 Nick Boyer.

20 HEARING OFFICER: B-O-Y-E-R?

21 JOHN GALCZYNSKI: That is correct,
22 Kevin Kidd.

23 HEARING OFFICER: I already have that.

24 JOHN GALCZYNSKI: Patty Simmons.

25 HEARING OFFICER: I have that.

1 JOHN GALCZYNSKI: Thomas Sayers.

2 HEARING OFFICER: I have that.

3 JOHN GALCZYNSKI: Lora, Arisi L-O-R-A.

4 HEARING OFFICER: And the last name?

5 JOHN GALCZYNSKI: A-R-I-S-I.

6 HEARING OFFICER: Okay.

7 JOHN GALCZYNSKI: Alicia A-L-I-C-I-A,
8 Hirsch, H-I-R-S-C-H.

9 HEARING OFFICER: Okay -- okay, it's time
10 we're going to go ahead and get started. Let
11 me ask you, um you said something while I was
12 outside I didn't want you to say it until you
13 got in here. But, Mr. Murphy, wanted to come
14 back first what was the reason?

15 KELLY CHARLES-COLLINS: I would like him
16 to be excused. He subpoenaed him, but as you
17 can see he didn't name him as a witness and
18 I'm not calling him as a witness --

19 JOHN GALCZYNSKI: Yes, he is, actually,
20 one of the witnesses --

21 KELLY CHARLES-COLLINS: And he has
22 absolutely no knowledge about this case.

23 HEARING OFFICER: Okay, well let me ask
24 you, Mr., um --

25 JOHN GALCZYNSKI: The reason we --

1 HEARING OFFICER: Can I ask tell me what
2 is the -- the reason he's being called as a
3 witness?

4 JOHN GALCZYNSKI: The reason he's being
5 called here is to testify specifically
6 relating to the policies, procedures and
7 practices of Publix in this matter.

8 There were, uh communications that were
9 made through that office of which he is
10 responsible for along with, um the policies
11 that were in effect at the time. I'd like
12 testimony relating to that.

13 HEARING OFFICER: Okay, well, I think
14 that the -- the -- that Ms. Barnes'
15 representative has made, um has -- has made
16 point on why he wants to call him.

17 So, I'm going to allow him to -- to -- or
18 remain as a witness, I'm sorry, but there is
19 certain things I have to do to be fair to both
20 sides.

21 And that's one, uh I believe he's -- he's
22 met his burden on what he just said, ma'am, if
23 want to object you can object. But at this
24 point --

25 KELLY CHARLES-COLLINS: I'm going to

1 object because he was not involved in any way
2 with Ms. Barnes' job at Publix. In addition,
3 the District Manager is here he can testify
4 about policies and procedures.

5 Mr. Sayers is here he can testify about
6 policies and procedures that directly related
7 to her job and position at Publix.

8 We had a hearing over four hours, um the
9 last time Mr. Murphy was not a witness. And
10 he was able to get all the information that he
11 needed with regards to policies and
12 procedures. So, at this time I would object
13 to him being called --

14 JOHN GALCZYNSKI: And I'm going to object
15 to that objection --

16 HEARING OFFICER: Okay --

17 AMY E. BARNES: Next time, uh he can tell
18 about policies and procedures, DM he can't --
19 he can't believe --

20 KELLY CHARLES-COLLINS: No, I'm going to
21 object to her testifying at this point --

22 HEARING OFFICER: Okay, to be honest I
23 can't tell what she's saying, tell me what
24 she's saying, sir? What is she saying, sir?

25 AMY E. BARNES: Later the -- the DM said,

1 he didn't know, uh the policies about that we
2 needed to do in our region, he didn't know
3 about the policies in our region. But we need
4 a Regional, uh Manager we need a Regional
5 Manager.

6 HEARING OFFICER: Okay, I'm going to
7 allow him to testify, ma'am. I think they've
8 met their burden. Sir, I need you to go back
9 to the lobby and I'll call you back at the
10 appropriate time.

11 PATRICK MURPHY: Okay.

12 HEARING OFFICER: Um Ms. Barnes, I have
13 your address as 886 Wanda Circle, Southwest,
14 Marietta, Georgia, 30088, is that correct?

15 AMY E. BARNES: Yes, that's my address.

16 HEARING OFFICER: Okay, and I have the
17 Employer's address, the local address as
18 4401 Shallowford Road, Roswell, Georgia,
19 30075, is that correct?

20 KELLY CHARLES-COLLINS: Yes.

21 HEARING OFFICER: Okay, I have the
22 Employer's corporate address as P.O. Box 407,
23 Lakeland, Florida, 33802, is that correct?

24 KELLY CHARLES-COLLINS: Yes.

25 HEARING OFFICER: Okay, do you swear or

1 affirm that the testimony you're about to give
2 is the truth, the whole truth and nothing but
3 the truth so help you God, Ms., um
4 Mr. Boyer, I'm sorry, Mr. Sayers --

5 THOMAS SAYERS: Sayers.

6 HEARING OFFICER: Mr. Sayers, do you
7 swear or affirm that the testimony you're
8 about to give is the truth, the whole truth
9 and nothing but the truth so help you God?

10 THOMAS SAYERS: I do.

11 HEARING OFFICER: And, um Ms. Barnes, do
12 you swear or affirm that the testimony you're
13 about to give is the truth, the whole truth
14 and nothing but the truth so help you God?

15 AMY E. BARNES: Yes.

16 HEARING OFFICER: And -- and, ma'am, I'm
17 assuming you're not giving testimony, is that
18 correct?

19 KELLY CHARLES-COLLINS: Right, I'll do
20 the closing.

21 HEARING OFFICER: But you're not --
22 you're not giving sworn testimony?

23 KELLY CHARLES-COLLINS: No.

24 HEARING OFFICER: Okay, I know that I'm
25 recording the hearing, but I have to ask,

1 anybody else in the room are they recording
2 the hearing, Mr. Sayers, are you recording
3 the hearing?

4 THOMAS SAYERS: No.

5 HEARING OFFICER: Ma'am, are you?

6 KELLY CHARLES-COLLINS: No.

7 HEARING OFFICER: And, um --

8 JOHN GALCZYNSKI: No.

9 HEARING OFFICER: -- Mr. Galczynski, are
10 you recording the hearing? Ms. Barnes?

11 AMY E. BARNES: No.

12 HEARING OFFICER: Sir, are you?

13 INTERPRETER CELIO BEST: No.

14 HEARING OFFICER: Okay, all right, I'm
15 going to go over a brief opening statement.
16 This hearing is designed to be informal when
17 compared with a courtroom setting.

18 Even though it's informal the Law
19 requires all testimony be taken under oath.
20 In just a few minutes I'll go over the
21 documents that I have in the file, I'll number
22 them and enter them into the record.

23 Having done that I'll open the hearing
24 for testimony. Each side will have the
25 opportunity to testify.

1 Each side will have the opportunity to
2 cross-examine or question the testimony of
3 the other.

4 You will further have the opportunity to
5 question any witness that appears in your
6 behalf as well as cross-examine or question
7 any witness that appears for the opposing
8 side.

9 You will also have an opportunity to make
10 any additional statements and closing remarks
11 you want to make relative to the issues in
12 this case.

13 Once all testimony is in relative to
14 those issues I'll declare the hearing at a
15 close.

16 You will not receive a Decision today
17 I'll have a typewritten Decision mailed to
18 you. If you disagree with my Decision you
19 have the right to file an Appeal to the
20 Board of Review.

21 The Board of Review as their name implies
22 will go over a tape of this hearing for its
23 technical and legal inaccuracies.

24 They will not and I repeat they will not
25 accept any additional testimony or new

1 evidence at their hearing.

2 It is therefore, necessary that you get
3 on the record today at this hearing all the
4 facts you want to have considered in relation
5 to the issues in this case.

6 Do either one of you have any questions
7 about how we're going to do the hearing
8 today --

9 JOHN GALCZYNSKI: I do.

10 HEARING OFFICER: And your question?

11 JOHN GALCZYNSKI: Uh my question is I'd
12 like to introduce into evidence, uh subject to
13 review by, um Publix Counsel, uh their policy,
14 um guidelines as well as their practices.

15 HEARING OFFICER: Okay, in just a minute
16 I'll go over, uh I'll give you an opportunity,
17 both sides to give any documents like that in
18 just a few seconds. But any other questions
19 about how we're going to proceed with the
20 hearing today?

21 JOHN GALCZYNSKI: Um yes, uh essentially
22 I wanted to meet the burden that are required
23 under OCGA for the purposes of this hearing.
24 I wanted to, uh initially begin with testimony
25 from Nick Boyer and --

1 HEARING OFFICER: Well, I'm not -- you're
2 not going to dictate the order we --

3 JOHN GALCZYNSKI: I'm asking --

4 HEARING OFFICER: -- have testimony, I
5 will go over the order of testimony in just a
6 few minutes, I haven't gotten that far yet.

7 JOHN GALCZYNSKI: Okay.

8 HEARING OFFICER: Any other questions?

9 JOHN GALCZYNSKI: Um no, I -- I think we
10 can take whatever comes along as we go along.

11 HEARING OFFICER: Okay, all right, ma'am,
12 do you have any questions?

13 KELLY CHARLES-COLLINS: No.

14 HEARING OFFICER: Okay, I'm going to go
15 over the issues on the Notice. Before I go
16 over the -- let me just go over the issues one
17 by one at this time.

18 The first issue is the Quit issue. The
19 issue is whether the Claimant had a good work
20 connected cause for leaving the Employer or
21 whether the Claimant voluntarily accepted the
22 separation due to a lack of work.

23 Issue Number 2 is the Discharge issue,
24 whether the Discharge or suspension of the
25 Claimant was for a failure to follow orders,

1 rules or instructions or for a failure to
2 perform the duties for which employed.

3 Issue Number 3 is whether supplied
4 written Separation Information to the
5 Department of Labor in a timely manner.

6 The issues I went over, do either one of
7 you have any questions about how we're going
8 to do the hearing today, Mr. Galczynski, any
9 questions?

10 JOHN GALCZYNSKI: Um I intend to show
11 constructive Discharge relating to those
12 issues and, um -- um my questions are, uh
13 simply if you have any exceptions or
14 additional information relating to that?

15 HEARING OFFICER: Do I have any to give
16 you --

17 JOHN GALCZYNSKI: No, discount the
18 question and then, I'll just proceed.

19 HEARING OFFICER: Okay, ma'am, do you
20 have any questions?

21 KELLY CHARLES-COLLINS: No.

22 HEARING OFFICER: Um I know I wrote it
23 down, but tell me again, you're Ms. Collins,
24 right?

25 KELLY CHARLES-COLLINS: Yes.

1 HEARING OFFICER: Okay, I have a copy of
2 the Claims Examiner's Determination. It
3 states disqualification began on November 7th,
4 2010.

5 It also says signed timely Separation
6 Information was received. And this document
7 was mailed out on December 2nd, 2010.

8 I'm showing this to all parties. I need
9 to enter this into the record because this is
10 the original basis for the Appeal. Any
11 objection to me entering this into the record,
12 sir, Mr. Galczynski?

13 JOHN GALCZYNSKI: No.

14 HEARING OFFICER: Any objections
15 Ms. Collins?

16 KELLY CHARLES-COLLINS: No.

17 HEARING OFFICER: Entering the
18 Claims Examiner's Determination into the
19 record as Exhibit 1.

20 INTERPRETER CELIO BEST: You said did
21 she --

22 HEARING OFFICER: Well, I asked her
23 representative.

24 INTERPRETER CELIO BEST: Oh.

25 HEARING OFFICER: And he said, no.

1 Before I go any farther I'm going to ask both
2 parties a question and it will determine how -
3 - how I -- what order I proceed in. Um
4 Ms. Collins, was this a situation where
5 Ms. Barnes quit in lieu of Discharge?

6 KELLY CHARLES-COLLINS: No.

7 HEARING OFFICER: And, sir, is it your
8 contention that she quit her job in lieu of
9 Discharge?

10 JOHN GALCZYNSKI: Uh essentially that
11 there was constructive termination.

12 HEARING OFFICER: Are you -- you're
13 saying that she -- if she had not quit she
14 would have been discharged, is that correct?

15 JOHN GALCZYNSKI: That is correct.

16 HEARING OFFICER: Okay, and you're
17 disagreeing with that, is that correct?

18 KELLY CHARLES-COLLINS: And she testified
19 to that fact last --

20 HEARING OFFICER: I need to --

21 JOHN GALCZYNSKI: She --

22 HEARING OFFICER: Stop -- stop, I need to
23 point out to both parties right here and now
24 there was a former -- it was a hearing in this
25 case I realize.

1 It was appealed and the Board of Review
2 remanded it back for a Denovo Hearing. So,
3 that -- that last hearing I'm basing my
4 Decision today on this testimony -- in this
5 hearing today, ma'am.

6 Okay, it was remanded back to me to
7 conduct the hearing, uh a new hearing, so I
8 want you to understand that --

9 KELLY CHARLES-COLLINS: I clearly
10 understand that, believe me, I understand
11 that.

12 HEARING OFFICER: Okay.

13 KELLY CHARLES-COLLINS: So, but I don't
14 think it's appropriate for just because they
15 were allowed to get a new hearing that they
16 come back and say something that is contrary
17 to what they testified to under oath.

18 HEARING OFFICER: Okay.

19 KELLY CHARLES-COLLINS: So, no, she was
20 not facing Discharge and I would object she
21 was not -- she was not facing --

22 HEARING OFFICER: Okay.

23 KELLY CHARLES-COLLINS: -- Discharge she
24 quit.

25 HEARING OFFICER: Okay, go ahead, sir.

1 JOHN GALCZYNSKI: I'm going to object to
2 her objection, this is a Denovo Review under
3 Denovo procedures. We have a right to start
4 anew.

5 HEARING OFFICER: And that's what we're
6 doing both parties. Okay, I will conduct the
7 -- I will conduct the Employer's testimony
8 first.

9 After the Employer testifies, um
10 Ms. Barnes' representative, sir, you'll be
11 able to ask questions.

12 Before that, Ms. Collins, you'll be able
13 to ask questions. I will get the Employer's
14 witness' testimony.

15 Um after that I will get Ms. Barnes'
16 testimony. After Ms. Barnes testifies, um
17 Mr. Galczynski, and -- and, uh Ms. Collins,
18 you'll be able to ask questions.

19 After that I will get the Claimant's
20 witness' testimony. After they testify both
21 sides will have the opportunity to ask them
22 questions.

23 After that we'll move to rebuttal
24 statements then, we'll move to closing
25 statements. Um sir, as I'm going to get your

1 way I've always done --

2 KELLY CHARLES-COLLINS: And I understand
3 I'm just putting it on the record --

4 HEARING OFFICER: That's fine -- that's
5 fine, Mr. Sayers, um do you have the start
6 date of Ms. Barnes?

7 THOMAS SAYERS: I don't know her start
8 date with the company. I started working with
9 her in January of 2010.

10 HEARING OFFICER: Okay, and what was the
11 day of separation?

12 THOMAS SAYERS: She came in and resigned
13 on November 3rd, 2010. I don't know the date
14 it was formally submitted.

15 HEARING OFFICER: Okay, did she come to
16 you?

17 THOMAS SAYERS: Uh she came to my
18 Assistant Store Manager, Kevin Kidd and then,
19 I was in the store. I came up to the front
20 desk where she was and, uh I accepted her
21 resignation letter that she turned in.

22 HEARING OFFICER: Did she give you at
23 that time did she give you any reasons?

24 THOMAS SAYERS: She said she had found
25 another job, something dealing with

1 communications at a law firm.

2 HEARING OFFICER: And that's what she
3 told you on that day, is that correct?

4 THOMAS SAYERS: Yes, sir.

5 HEARING OFFICER: And was there available
6 work for her?

7 THOMAS SAYERS: Yes, she was scheduled to
8 work that week. She was scheduled to work
9 that day at nine o'clock. She came in at 8:50
10 and said she wasn't coming back to work.

11 HEARING OFFICER: Okay, she did not give
12 a notice?

13 THOMAS SAYERS: No, 10 minutes.

14 HEARING OFFICER: Okay, and you
15 personally spoke with her on that day, is that
16 correct?

17 THOMAS SAYERS: I did, yes, I did.

18 HEARING OFFICER: And --

19 THOMAS SAYERS: She thanked me for, you
20 know, everything I did for her.

21 HEARING OFFICER: And before that had she
22 come to you with any problems she was having?

23 THOMAS SAYERS: Uh we've had numerous
24 conversations about performance issues, yes.
25 She never came directly to me about problems

1 that she was having. But her and I had -- had
2 numerous conversations about her performance
3 issues.

4 HEARING OFFICER: Um sir, before I move
5 on is there anything else you'd like to tell
6 me about?

7 THOMAS SAYERS: Um I don't think so.

8 HEARING OFFICER: Okay, Ms. Collins, do
9 you have any questions for Mr. Sayers?

10 KELLY CHARLES-COLLINS: Did Ms. Barnes
11 give you a letter of resignation?

12 THOMAS SAYERS: Yes.

13 KELLY CHARLES-COLLINS: And at this time
14 I would like to admit into evidence the
15 resignation letter from Ms. Barnes. It should
16 be a part of the packet.

17 HEARING OFFICER: I didn't see it, let me
18 go back through.

19 KELLY CHARLES-COLLINS: It should be
20 towards the back of your --

21 HEARING OFFICER: If I don't have it I'll
22 go make a copy of yours.

23 KELLY CHARLES-COLLINS: Okay, it's
24 handwritten.

25 HEARING OFFICER: Okay, I don't see it,

1 let me go make a copy of yours.

2 KELLY CHARLES-COLLINS: Okay.

3 HEARING OFFICER: I'm going to step out
4 of the room and go make copies of this
5 document --

6 JOHN GALCZYNSKI: I'm going to object.

7 HEARING OFFICER: What's your objection?

8 JOHN GALCZYNSKI: My objection is that
9 Ms. Barnes was under duress. Mr. Kidd, if
10 you'll read the email and I'd like to pause
11 for production of evidence on relating to the
12 email that was given earlier.

13 Uh Mr. Kidd directed, uh the Claimant,
14 Amy Barnes to, uh write that letter and, uh
15 Ms. Barnes under knowledge that, um if -- if
16 you don't cooperate in the marketplace you are
17 not able to get further work.

18 And given the number of calls in Publix
19 which have produced no references at all
20 relating to Ms. Barnes in various positions
21 that she had applied for it seems that, uh its
22 gone beyond that.

23 HEARING OFFICER: Well, I'm going to go
24 make a copy of this document right now.

25 JOHN GALCZYNSKI: Okay.

1 HEARING OFFICER: Uh because I looked
2 through the file and I don't see it in my
3 copies. And it should be -- it's stapled back
4 in one of these, uh mixed up, uh it will be
5 quicker to go make a copy.

6 So, I'm going to go make a copy of this
7 document. I've noted your objection for the
8 record, but as far as the document being in
9 the record I am going to enter the document in
10 the record.

11 JOHN GALCZYNSKI: That's fine.

12 HEARING OFFICER: I'm going to make a
13 copy of it I'm going to come right back and
14 while I'm out of the room please don't discuss
15 this case. I'll be right back. Okay, I'm
16 back in the room and here is your originals
17 back.

18 KELLY CHARLES-COLLINS: Thank you.

19 HEARING OFFICER: And, sir, there is a
20 copy for you as well. I am going to enter the
21 document in the record.

22 I'm entering the document as Employer's
23 Exhibit 1. Okay, um sir, at any time -- let
24 me back up and ask you one more time before I
25 move on.

1 At any time, Mr. Sayers, in your present
2 did you or did you witness anyone else
3 pressure
4 Ms. Barnes into writing this letter of
5 resignation?

6 THOMAS SAYERS: No.

7 HEARING OFFICER: Was it -- were you
8 present when she was asked to write it?

9 THOMAS SAYERS: I was not present when
10 she was asked to write it.

11 HEARING OFFICER: Were you present when
12 she wrote it?

13 THOMAS SAYERS: No, not in her presence.
14 She handed it to me.

15 HEARING OFFICER: Uh I'm going to move
16 on, ma'am, any other questions for your
17 witness?

18 KELLY CHARLES-COLLINS: Are we going to
19 come back to him to go into details? I'm not
20 sure if you're doing something preliminary.

21 HEARING OFFICER: No, I'm not, uh do you
22 have any questions you want to ask him?

23 KELLY CHARLES-COLLINS: Oh, yes.

24 HEARING OFFICER: Go ahead.

25 KELLY CHARLES-COLLINS: Mr. Sayers, you

1 were the Store Manager at Store 86 when
2 Amy Barnes worked there?

3 THOMAS SAYERS: Yes.

4 KELLY CHARLES-COLLINS: Okay, and when
5 she worked for you was she able to communicate
6 with you?

7 THOMAS SAYERS: Yes.

8 KELLY CHARLES-COLLINS: And was she able
9 to do that without, uh an Interpreter?

10 THOMAS SAYERS: Yes.

11 KELLY CHARLES-COLLINS: And as part of
12 her job duties, uh tell her what her job
13 duties were?

14 THOMAS SAYERS: Uh she was a
15 Customer Service staff, which meant that she
16 ran the front office counter. She was
17 responsible for answering telephones, uh
18 supervising associates, assisting customers.
19 She handled cash, she opened the office,
20 handled the safe.

21 KELLY CHARLES-COLLINS: Did she ever
22 need, uh anyone, uh any assistance with
23 answering the telephone?

24 THOMAS SAYERS: No.

25 KELLY CHARLES-COLLINS: Did she need any

1 assistance with communicating with you,
2 customers or other, um associates or Managers
3 at the Publix store?

4 THOMAS SAYERS: No.

5 KELLY CHARLES-COLLINS: Um during her
6 tenure at Store 86 did you have any
7 performance issues with her?

8 THOMAS SAYERS: Yes.

9 KELLY CHARLES-COLLINS: Do you -- tell me
10 in general what those performance issues were?

11 THOMAS SAYERS: Uh punctuality was an
12 issue and, uh her supervisory skills were an
13 issue. Her ability to stay on task and stay
14 focused.

15 Um had a confidentiality issue with her
16 where she would go into my office and read
17 documents that were private, not intended to
18 be read by other associates.

19 And she had issues with customers where
20 on several occasions she had inappropriate
21 conversations with them not related to a
22 shopping experience at Publix.

23 KELLY CHARLES-COLLINS: Do you recall an
24 incident that happened in May, um around
25 May 26th with a customer, did you receive a

1 customer complaint?

2 THOMAS SAYERS: I did.

3 KELLY CHARLES-COLLINS: Okay, can you
4 tell us about that customer?

5 THOMAS SAYERS: I received a, uh --

6 HEARING OFFICER: I need to point out to
7 all parties before I'm -- I'm not going to
8 allow him to testify to what the customer
9 complaint was because the customer -- it's
10 hearsay without the customer being called as a
11 witness to give firsthand testimony.

12 KELLY CHARLES-COLLINS: Okay, but she
13 received a counseling statement --

14 HEARING OFFICER: Well, that's different
15 that's -- that's -- I'm just saying he's --
16 he's testifying directly to the, um customer
17 complaint what the customer said, I'm not
18 going to allow that.

19 KELLY CHARLES-COLLINS: Right, but
20 hearsay would be if I was offering it for the
21 truth of the matter. What I'm offering it for
22 is to show that he received a customer
23 complaint in that he --

24 HEARING OFFICER: If -- if -- the
25 question is regarding, um a written warning

1 that's -- that's different. But I'm saying
2 he's testifying to what the customer said, I'm
3 -- I'm not going to allow that.

4 KELLY CHARLES-COLLINS: Okay, on
5 May 26th did you issue -- May 26th or
6 May 27th did you issue Ms. Barnes a counseling
7 statement?

8 THOMAS SAYERS: I did.

9 KELLY CHARLES-COLLINS: And what was that
10 counseling statement for?

11 THOMAS SAYERS: It was related to a call
12 I received from a customer complaining about
13 Amy's behavior at the register.

14 KELLY CHARLES-COLLINS: Okay, and did you
15 discuss that complaint without telling us what
16 the complaint was, did you discuss that
17 complaint with Ms. Barnes?

18 THOMAS SAYERS: I did.

19 KELLY CHARLES-COLLINS: And did you, uh
20 when you issued her the counseling statement
21 was this the first time that you had spoken to
22 her about an issue like this?

23 THOMAS SAYERS: Yes, I believe so, this
24 particular --

25 KELLY CHARLES-COLLINS: You had -- had --

1 had you spoken to her about performance issues
2 prior to that?

3 THOMAS SAYERS: Uh yes, nothing
4 documented.

5 KELLY CHARLES-COLLINS: Okay.

6 THOMAS SAYERS: Just general coaching.

7 KELLY CHARLES-COLLINS: So, this was the
8 first written counseling that you were giving
9 her?

10 THOMAS SAYERS: Yes, it was.

11 KELLY CHARLES-COLLINS: All right, and
12 did you explain to her what would happen if
13 she failed to improve her behavior?

14 THOMAS SAYERS: I did, I documented it on
15 the counseling statement.

16 KELLY CHARLES-COLLINS: Okay, and what
17 was that?

18 THOMAS SAYERS: Future occurrences would
19 lead to a five day suspension.

20 KELLY CHARLES-COLLINS: And did you give
21 Ms. Barnes a copy of this counseling?

22 THOMAS SAYERS: I did.

23 KELLY CHARLES-COLLINS: And did she sign
24 it?

25 THOMAS SAYERS: She did.

1 KELLY CHARLES-COLLINS: I'd like to enter
2 this counseling statement dated May 27th, 2010
3 into evidence.

4 HEARING OFFICER: Okay --

5 JOHN GALCZYNSKI: I would like to review
6 that statement --

7 HEARING OFFICER: Okay, you will, sir,
8 just a second, okay, let me find it in here.
9 I show one from October 10th, 2010 is that
10 not --

11 KELLY CHARLES-COLLINS: No, May 27th,
12 2010.

13 HEARING OFFICER: Just one second. You
14 have two copies of that --

15 THOMAS SAYERS: I do if you'd like --

16 HEARING OFFICER: Do y'all have a copy of
17 this?

18 JOHN GALCZYNSKI: No.

19 KELLY CHARLES-COLLINS: They have been
20 provided a copy.

21 HEARING OFFICER: I asked if they had a
22 copy at this time, ma'am, is what I was
23 asking. Let me go make a copy of this for
24 y'all and I'll be right back.

25 Is there anything else you're going to

1 present that I need to make copies, so I can
2 make them all at one time?

3 KELLY CHARLES-COLLINS: I'm going to have
4 him -- Mr. Sayers --

5 HEARING OFFICER: That's fine.

6 KELLY CHARLES-COLLINS: -- October 10th.
7 Um do you have October 10th?

8 THOMAS SAYERS: I do.

9 KELLY CHARLES-COLLINS: And then,
10 November 2nd?

11 THOMAS SAYERS: I do.

12 KELLY CHARLES-COLLINS: Okay.

13 HEARING OFFICER: Okay, anything else,
14 ma'am --

15 KELLY CHARLES-COLLINS: No, that's it.

16 HEARING OFFICER: I'm going to make
17 copies for you, sir, I'll be right back with
18 these documents. Um while I'm out of the room
19 please don't discuss this case it's 1:35 p.m.
20 There you go, okay, the first one I have is
21 dated May 26th, 2010.

22 KELLY CHARLES-COLLINS: Yes, sir.

23 HEARING OFFICER: Okay.

24 KELLY CHARLES-COLLINS: May 27th is the
25 date that she signed it and that's --

1 HEARING OFFICER: All right, Ms. Barnes,
2 did you receive this warning, is that your
3 signature on it? Can you show it to her?

4 AMY E. BARNES: Yes.

5 HEARING OFFICER: Okay, and, sir, do you
6 have any objection to me entering this
7 document into the record?

8 JOHN GALCZYNSKI: Um one is a
9 characterization by, uh Counsel for Publix.
10 Um one gets the impression that, uh a
11 counseling statement is a, uh a document that
12 is punitive in nature.

13 In fact, I'd like to introduce a
14 counseling statement that was, um nothing
15 short of an accolade for Ms. Barnes, um
16 reveling her performance, so that any of the
17 counseling statements must be taken within the
18 context of that, so that it isn't simply all,
19 uh unilaterally negative. It is simply a
20 review.

21 HEARING OFFICER: Okay, I've noted your
22 objection for the record, but I am going to
23 enter the document into the record. And I'm
24 entering the document into the record as
25 Employer's Exhibit 2.

1 JOHN GALCZYNSKI: All right.

2 HEARING OFFICER: Go ahead, sir.

3 JOHN GALCZYNSKI: All right, I'd like to
4 enter a positive counseling statement --

5 HEARING OFFICER: When I get to your
6 testimony I'll go over --

7 JOHN GALCZYNSKI: Okay.

8 HEARING OFFICER: -- all those with you
9 like I'm going over with the Employer right
10 now.

11 JOHN GALCZYNSKI: All right, well, then,
12 um if you'll give me a few minutes I'd like
13 the opportunity to review this evidence that's
14 being presented?

15 HEARING OFFICER: Go right ahead, sir.

16 JOHN GALCZYNSKI: Thank you. All right,
17 so we're going to label these dated on
18 the 26th as Number 2?

19 HEARING OFFICER: Yes, the first one is -
20 - yes, letter of resignation is Employer
21 Exhibit 1.

22 JOHN GALCZYNSKI: Okay, and we're going
23 to label the, uh one dated 10-10 as, uh
24 Exhibit Number 3 --

25 HEARING OFFICER: No, I hadn't gotten

1 there yet.

2 JOHN GALCZYNSKI: Oh, I'm sorry.

3 HEARING OFFICER: I don't know if we are,
4 uh most likely, but I don't know.

5 JOHN GALCZYNSKI: Okay.

6 HEARING OFFICER: So, let's go over the
7 document first. The next document, uh is
8 October 10th, 2010. Mr. Sayers, were you the
9 one that administered this document?

10 THOMAS SAYERS: I was.

11 HEARING OFFICER: And what is this for?

12 THOMAS SAYERS: This is in reference to
13 an incident that occurred on October 5th when
14 Amy went into my office, uh to clean it while
15 she was in there she saw a paper on the desk
16 that had her name on it. And she read that
17 paper.

18 HEARING OFFICER: Okay, how did you find
19 out about that?

20 THOMAS SAYERS: She brought it to the
21 attention -- she was upset about the paper and
22 she brought it to the attention of another
23 Manager.

24 HEARING OFFICER: And at any point did
25 you speak with her and ask whether she had

1 done that?

2 THOMAS SAYERS: I did.

3 HEARING OFFICER: What did she tell you?

4 THOMAS SAYERS: She said that she was in
5 there cleaning and she came across it and read
6 it inadvertently. And it was also witnessed
7 on a close circuit TV.

8 HEARING OFFICER: And --

9 JOHN GALCZYNSKI: I'm going to object to
10 that they're not presenting the evidence on
11 certain events.

12 HEARING OFFICER: Well, he can testify to
13 what she told him.

14 JOHN GALCZYNSKI: I understand that --
15 that wasn't --

16 HEARING OFFICER: Okay.

17 JOHN GALCZYNSKI: -- that wasn't the
18 nature of my objection -- my objection --

19 HEARING OFFICER: Well, uh the -- the --
20 I'll point out to all parties without a
21 videotape being entered into evidence if
22 someone testifies to what they saw on the
23 videotape it's hearsay. I'll point that out
24 to both party's right here and now.

25 JOHN GALCZYNSKI: Okay.

1 HEARING OFFICER: Okay, um and was this
2 warning for reading what was on your desk?

3 THOMAS SAYERS: Yes, that was half of the
4 counsel statement. The other half was because
5 when she spoke to my Assistant Store Manager,
6 Kevin about it she cursed at him.

7 HEARING OFFICER: Okay.

8 THOMAS SAYERS: And that was the second
9 time that she --

10 HEARING OFFICER: And did you -- did you
11 ask -- did you witness profanity?

12 THOMAS SAYERS: No, I did not.

13 HEARING OFFICER: Did you Ms. Barnes
14 whether she used profanity?

15 THOMAS SAYERS: I did.

16 HEARING OFFICER: What did she tell you?

17 THOMAS SAYERS: She did she said that she
18 did.

19 HEARING OFFICER: Um I'll ask you, sir,
20 before I move any farther. Regarding this
21 document that I have here that you have a copy
22 of, do you have any objection with me entering
23 this document into the record?

24 JOHN GALCZYNSKI: Um yes, um essentially
25 Ms. Barnes was complaining about working

1 conditions and working conditions are
2 protected each --

3 HEARING OFFICER: Okay, I've noted your
4 objection for the record, but I don't find it
5 relevant.

6 JOHN GALCZYNSKI: Okay.

7 HEARING OFFICER: So, I am going to enter
8 the document into the record. I'm entering
9 the document into the record as Employer's
10 Exhibit 3. Okay, the next document I have is
11 dated November 2nd, 2010. What is this, sir?

12 THOMAS SAYERS: Um this is in reference
13 to a customer complaint that --

14 HEARING OFFICER: This was never
15 administered, is that correct?

16 THOMAS SAYERS: Correct.

17 HEARING OFFICER: Okay, so at this time
18 I'm not entering this document into the record
19 that was never administered. So, I'm not
20 entering it into the record.

21 KELLY CHARLES-COLLINS: Well, he,
22 actually, did talk to her about the incident
23 that occurred.

24 JOHN GALCZYNSKI: I'm going to object
25 she's testifying --

1 HEARING OFFICER: Okay, ma'am, it says
2 here associate resigned or forwarded from
3 suspension what --

4 KELLY CHARLES-COLLINS: No, I just want
5 to make it -- I wanted him to be able to
6 testify to what happened because he did,
7 actually, speak to her about it --

8 HEARING OFFICER: Yeah, but --

9 KELLY CHARLES-COLLINS: -- he didn't give
10 her the counseling statement --

11 HEARING OFFICER: -- but the counseling
12 statement itself I'm not going to enter the
13 document in the record --

14 KELLY CHARLES-COLLINS: That's fine.

15 HEARING OFFICER: -- because it was never
16 administered.

17 KELLY CHARLES-COLLINS: I understand
18 that.

19 HEARING OFFICER: Okay.

20 KELLY CHARLES-COLLINS: I just want to
21 make sure that he is -- I didn't want to just
22 move on from that.

23 HEARING OFFICER: All right, do you have
24 any questions you want to ask him, ma'am?

25 KELLY CHARLES-COLLINS: I do have lots of

1 questions I'd like to ask --

2 HEARING OFFICER: Okay, go ahead -- go to
3 your next question, please.

4 KELLY CHARLES-COLLINS: Um Mr. Sayers,
5 after you issued the counseling statement to
6 Ms. Barnes on May 27th did you have occasion
7 to have to have another discussion with her on
8 or about May 29th?

9 THOMAS SAYERS: I did.

10 KELLY CHARLES-COLLINS: And what was that
11 about?

12 THOMAS SAYERS: That was performance
13 related. She was scheduled to be at work at
14 Noon and I noticed it was five after Noon she
15 had not shown up for work yet.

16 And when she did arrive I asked her where
17 she had been and what she had been doing and
18 why she was late.

19 KELLY CHARLES-COLLINS: What did she tell
20 you?

21 THOMAS SAYERS: She said she was in the
22 Employee break room, um talking with some
23 other associates about how her day was going.
24 She had to go back to her locker to get her
25 breath mints and her lotion.

1 KELLY CHARLES-COLLINS: And when you were
2 speaking to her was she insubordinate to you?

3 THOMAS SAYERS: She was.

4 KELLY CHARLES-COLLINS: And how was she
5 insubordinate?

6 THOMAS SAYERS: Uh she -- she had, you
7 know, started to walk away, she didn't want to
8 hear what I had to say. She said anyways and
9 turned away from me. She didn't want to
10 accept my coaching.

11 KELLY CHARLES-COLLINS: When you were
12 speaking to her where were you speaking?

13 THOMAS SAYERS: Uh initially I was
14 speaking to her in front of the customer
15 service counter.

16 But as it turned into a coaching session
17 I need to direct her I pulled her to the side
18 where it was just her and myself.

19 KELLY CHARLES-COLLINS: Were you loud
20 when you were speaking to her?

21 THOMAS SAYERS: Not at all.

22 KELLY CHARLES-COLLINS: Were you dressing
23 her down when you spoke to her?

24 THOMAS SAYERS: Not at all.

25 KELLY CHARLES-COLLINS: Were other

1 associates or customer present when you were
2 speaking to her?

3 THOMAS SAYERS: Not within earshot where
4 they could have heard me.

5 KELLY CHARLES-COLLINS: Did you in any
6 way treat her in an unprofessional manner when
7 you were speaking to her?

8 THOMAS SAYERS: No, it was a coaching
9 session.

10 KELLY CHARLES-COLLINS: Did you have to
11 speak to her -- did you speak with her later
12 that day?

13 THOMAS SAYERS: I did.

14 KELLY CHARLES-COLLINS: Tell me about
15 that?

16 THOMAS SAYERS: Well, she was upset that
17 I had spoke to her and she said I had used
18 heavy words with her.

19 Her Supervisor, Patty Simmons had brought
20 that to my attention. So, her, Patty and
21 myself sat down about three or four hours
22 later and we had some more discussion about
23 what had happened and why I was doing what I
24 was doing.

25 KELLY CHARLES-COLLINS: And during that,

1 um conversation did you again talk to her
2 about performance issues?

3 THOMAS SAYERS: I did.

4 KELLY CHARLES-COLLINS: Okay, what were
5 those performance issues?

6 THOMAS SAYERS: Um her leadership, uh her
7 punctuality, the same issues I had described
8 earlier.

9 KELLY CHARLES-COLLINS: And did you
10 again, uh instruct her that she needed to have
11 appropriate conversations with customers?

12 THOMAS SAYERS: I did.

13 KELLY CHARLES-COLLINS: And did you tell
14 her gain that her failure to improve could
15 lead to further disciplinary action?

16 THOMAS SAYERS: I did.

17 KELLY CHARLES-COLLINS: During that
18 conversation did Ms. Barnes ask you something
19 about transferring to another store?

20 THOMAS SAYERS: She did.

21 KELLY CHARLES-COLLINS: Okay, and did you
22 -- did she say why she wanted to transfer?

23 THOMAS SAYERS: Uh I don't recall
24 specifically why she said she wanted the
25 transfer.

1 KELLY CHARLES-COLLINS: Okay, did you
2 follow through on, uh submitting her request
3 for a transfer?

4 THOMAS SAYERS: I did.

5 KELLY CHARLES-COLLINS: And was she
6 transferred?

7 THOMAS SAYERS: She was not.

8 KELLY CHARLES-COLLINS: Why not?

9 THOMAS SAYERS: Uh the store she was
10 wanting to transfer to said that they did not
11 need her.

12 She had only given me the one store,
13 Store 580 that she wanted to go to. But they
14 did not have a position available for her at
15 that time.

16 KELLY CHARLES-COLLINS: If they don't
17 have a position available then, she can't go
18 to that store, correct?

19 THOMAS SAYERS: Correct.

20 KELLY CHARLES-COLLINS: Um was there an
21 incident that happened in July of -- in July
22 that caused you to issue -- caused you to have
23 to speak to her?

24 THOMAS SAYERS: Yes, there was.

25 KELLY CHARLES-COLLINS: But you were not

1 present for the actual incident, correct?

2 THOMAS SAYERS: I was not.

3 KELLY CHARLES-COLLINS: But you did have
4 to coach her?

5 THOMAS SAYERS: I did.

6 KELLY CHARLES-COLLINS: Tell me what you
7 talked about when you were coaching her?

8 THOMAS SAYERS: Um the Manager in charge
9 was closing the store that night. And as she
10 set the alarm Amy informed her that she had
11 left some milk in the refrigerator in the
12 deli.

13 The Manager in charge said, I'm sorry,
14 but we can't go back we have to leave the
15 store now.

16 They were still inside the store, but
17 they have to leave because they only have I
18 believe it's 60 seconds to exit the store.
19 Well, upon exiting the store Amy cursed at the
20 Managers that were there --

21 HEARING OFFICER: Okay, did you ask --
22 did you ever speak with Ms. Barnes and ask her
23 if she did this?

24 THOMAS SAYERS: Yes.

25 HEARING OFFICER: What did she tell you?

1 THOMAS SAYERS: She did.

2 HEARING OFFICER: Okay, go ahead.

3 KELLY CHARLES-COLLINS: Okay.

4 THOMAS SAYERS: Amy came in the next
5 morning -- I'm sorry.

6 KELLY CHARLES-COLLINS: Go ahead.

7 THOMAS SAYERS: Amy came in the next
8 morning to get her milk and she told me about
9 the incident.

10 She, actually, came in to get her milk,
11 but she also apologized for how she had
12 addressed the two Managers that closed that
13 night.

14 KELLY CHARLES-COLLINS: Did you write her
15 up for that?

16 THOMAS SAYERS: I don't think so.

17 KELLY CHARLES-COLLINS: You could have
18 written her up?

19 THOMAS SAYERS: Sure, I just -- I coached
20 her that morning she came in. I talked to her
21 about how she should speak appropriately to
22 Managers regardless of whether she's punched
23 in and on the clock.

24 She still needs to speak appropriately
25 and represent Publix appropriately especially

1 when she's in front of the store and other
2 associates are present.

3 KELLY CHARLES-COLLINS: Um we talked
4 about the counseling statement that you issued
5 to her on October 10th. In addition to --
6 what was the counseling statement for just in
7 general?

8 THOMAS SAYERS: It was about her reading
9 the email on my desk and it was also about how
10 she reacted when she was spoken to about that,
11 how she cursed at the Manager that spoke to
12 her about regarding that document.

13 KELLY CHARLES-COLLINS: And in addition
14 to giving her the counseling statement was
15 there any other actions taken?

16 THOMAS SAYERS: Yes, she was reclassified
17 from a Customer Service staff to a Cashier.

18 JOHN GALCZYNSKI: What was the date of
19 this?

20 HEARING OFFICER: What was the date she
21 was, uh made a Cashier?

22 THOMAS SAYERS: uh I don't have the date
23 that she was reclassified. The date of the
24 counseling statement is October 10th. The
25 date of the incident in question was

1 October 5th.

2 KELLY CHARLES-COLLINS: So, she was, uh
3 reclassified to a Cashier?

4 THOMAS SAYERS: Yes.

5 KELLY CHARLES-COLLINS: Was she told that
6 was being done?

7 THOMAS SAYERS: Yes.

8 KELLY CHARLES-COLLINS: Um --

9 HEARING OFFICER: What's your next
10 question?

11 KELLY CHARLES-COLLINS: Did you explain
12 to her why she was being reclassified?

13 THOMAS SAYERS: I did, lack of
14 confidentiality and professionalism. The
15 position she was in was a position of
16 leadership.

17 She was in charge of anywhere from four
18 to 25 associates at one time. She was also in
19 an area that was very confidential.

20 She was around personnel information,
21 other associate's information. I could not
22 trust her to be in that position based on her
23 professionalism and her lack of
24 confidentiality.

25 KELLY CHARLES-COLLINS: And in addition

1 to reading the email on your desk she also, um
2 told --

3 HEARING OFFICER: I need you to form it
4 in a question, okay, please.

5 KELLY CHARLES-COLLINS: I'm going to ask.

6 HEARING OFFICER: I -- I need you to go
7 ahead and make it a direct question, not --

8 KELLY CHARLES-COLLINS: I am.

9 HEARING OFFICER: Go ahead.

10 KELLY CHARLES-COLLINS: Did she tell
11 anyone else about the email that she read on
12 your desk?

13 THOMAS SAYERS: She told another
14 associate that was working that night and she
15 -- two days later or a day later I'm not sure
16 of the exact timeline, but she approached, uh
17 Kevin Kidd, Assistant Store Manager and told
18 him.

19 KELLY CHARLES-COLLINS: Is she supposed
20 to be reading things that on your desk?

21 THOMAS SAYERS: No.

22 KELLY CHARLES-COLLINS: Um the email that
23 had her name on it was it a recent email?

24 THOMAS SAYERS: It was not it was from
25 May. This just happened to be on my desk

1 because it was a list of other associates on
2 there that was a topic and she happened to see
3 her name in that list of associates.

4 KELLY CHARLES-COLLINS: And her name was
5 in the middle of that email?

6 THOMAS SAYERS: It was in the middle and
7 actually the name -- the associate it was left
8 for was highlighted. Her name was not
9 highlighted.

10 KELLY CHARLES-COLLINS: Was that, um
11 okay, she was reclassified to a Cashier and
12 after that did you have to speak to her again
13 about any of her issues?

14 THOMAS SAYERS: Yes, I did.

15 KELLY CHARLES-COLLINS: And when was
16 that?

17 THOMAS SAYERS: I spoke to her on
18 October 24th.

19 KELLY CHARLES-COLLINS: And what was that
20 regarding?

21 THOMAS SAYERS: Uh again, uh it had been
22 brought to my attention that, um Amy was
23 speaking to customers about inappropriate
24 things not related to a Publix shopping
25 experience.

1 And I brought Amy into my office to ask
2 her about it she refused to answer. I told
3 her if you're not going to answer my questions
4 I'm going to have to suspend you.

5 KELLY CHARLES-COLLINS: And how long did
6 you suspend her?

7 THOMAS SAYERS: I suspended her for
8 five working days.

9 HEARING OFFICER: When did the suspension
10 begin and when did it end?

11 THOMAS SAYERS: The suspension began on -
12 - I don't know the calendar day. I know it
13 ended on November 2nd. It was, actually, a
14 suspension covered two working weeks.

15 It covered the ending two days of the
16 first week and the beginning three days of the
17 next week.

18 HEARING OFFICER: That was as
19 five day suspension?

20 THOMAS SAYERS: Five working day
21 suspension. It might have covered more
22 calendar days, but that would encompass her
23 days off as well.

24 Basically she was scheduled to return to
25 work on November 2nd, which is a Wednesday.

1 And she would -- she was scheduled to work
2 that Wednesday, Thursday and Friday of that
3 week. Which would be three days.

4 Then, the previous week that the
5 suspension started she worked two days. She
6 would have worked a total of five days over a
7 two week span.

8 HEARING OFFICER: Next question, ma'am.

9 KELLY CHARLES-COLLINS: Was she scheduled
10 to return the 3rd or the 2nd?

11 THOMAS SAYERS: She was scheduled to
12 return on the 3rd, I'm sorry.

13 KELLY CHARLES-COLLINS: Okay, um did she
14 return to work?

15 THOMAS SAYERS: That's the day we spoke
16 about earlier where she came in 10 minutes
17 before her scheduled, uh shift and she came in
18 -- in street clothes. She had told us that
19 she was going to be taking a job somewhere
20 else.

21 KELLY CHARLES-COLLINS: Either on
22 October 10th when you, uh reclassified her to
23 a Cashier or on October 24th when you
24 suspended her did you at any -- in any of
25 those conversations tell her that she was

1 being reclassified pending discharge or
2 suspended pending discharge?

3 THOMAS SAYERS: Nothing pending
4 discharge.

5 KELLY CHARLES-COLLINS: She was -- when
6 you spoke to her I know that you did not give
7 her a counseling statement when she was being
8 suspended. But when you spoke to her did you
9 tell her that she was to return to work on
10 November 3rd?

11 THOMAS SAYERS: I didn't at that time,
12 but she called later in the week and spoke
13 with Patty Simmons and Patty told her when she
14 was returning to work.

15 KELLY CHARLES-COLLINS: And when you told
16 her she was suspended did you tell her at any
17 time that there was going to be a further
18 investigation or any other decisions made with
19 regards to her, um position at Publix?

20 THOMAS SAYERS: No, she was scheduled to
21 return on November 3rd as a Cashier.

22 KELLY CHARLES-COLLINS: And you spoke to
23 her on November 3rd and she gave you her
24 resignation letter. Did she tell you, uh at
25 that time that she was forced to write this

1 letter?

2 THOMAS SAYERS: No.

3 KELLY CHARLES-COLLINS: Did she tell you,
4 um that Kevin asked her to write the letter?

5 THOMAS SAYERS: No.

6 KELLY CHARLES-COLLINS: Did she tell you
7 that she was resigning for any other reason
8 other than that she had another job?

9 THOMAS SAYERS: No -- no, she seemed
10 fine, I mean she seemed upbeat happy. She had
11 found another job that she wanted.

12 KELLY CHARLES-COLLINS: Did you at any
13 time have an intention to discharge
14 Ms. Barnes?

15 THOMAS SAYERS: No.

16 KELLY CHARLES-COLLINS: Did you create
17 any type of hostile work environment such that
18 it would cause a reasonable person in her
19 position to want to quit?

20 THOMAS SAYERS: No.

21 KELLY CHARLES-COLLINS: I don't have any
22 other questions.

23 HEARING OFFICER: Sir, do you have any
24 questions for --

25 JOHN GALCZYNSKI: Yes, I do.

1 HEARING OFFICER: Go ahead, sir.

2 JOHN GALCZYNSKI: Mr. Sayers, I'd like
3 to, uh begin my questions, uh with, um -- um
4 first question is relating to the practice
5 handbook of Publix. Are you familiar with
6 this manual?

7 THOMAS SAYERS: I am.

8 JOHN GALCZYNSKI: And, um are you
9 required to apply this manual to your
10 management?

11 THOMAS SAYERS: Yes, are you talking
12 about the associate handbook?

13 JOHN GALCZYNSKI: Um at this time I would
14 like to introduce evidence, the associate
15 handbook.

16 HEARING OFFICER: Okay.

17 JOHN GALCZYNSKI: I have three copies of
18 that.

19 HEARING OFFICER: Okay, I'm going to give
20 y'all a copy.

21 JOHN GALCZYNSKI: Uh-hmm.

22 HEARING OFFICER: Okay, y'all can keep
23 one.

24 JOHN GALCZYNSKI: Certainly.

25 HEARING OFFICER: Okay, is this the

1 Employee handbook, ma'am, can you look at it
2 real quick and just tell me if --

3 KELLY CHARLES-COLLINS: It appears to be,
4 I'll object to it being entered into evidence.
5 I don't know what the relevance is, but it
6 appears to be.

7 HEARING OFFICER: Okay, well, I --

8 KELLY CHARLES-COLLINS: It has a
9 publication date of June 12th, 2010. It may
10 not be our current version, but it is --

11 HEARING OFFICER: Okay, I'll note the
12 date on the front page of the publication
13 date. I have noted your objection for the
14 record.

15 But I am going to enter the document into
16 the record. I'll enter the document into the
17 record as Claimant's Packet Exhibit 1. Go
18 ahead, sir, with your question.

19 JOHN GALCZYNSKI: Um as, uh
20 Store Manager you would be familiar with what
21 the duties and responsibilities are as you've
22 covered in earlier testimony, Ms. Collins.

23 And, um my question to you is, uh is
24 customer service representative's management,
25 is that considered a managerial position?

1 THOMAS SAYERS: No.

2 JOHN GALCZYNSKI: And you had addressed
3 earlier in your testimony that she was in
4 charge of anywhere from four to 25 associates.

5 THOMAS SAYERS: Supervised, yes.

6 JOHN GALCZYNSKI: She supervised, so in
7 effect she doesn't have a managerial title,
8 but she had a managerial position, is that
9 correct?

10 (gap in recording 63:00-63:04)

11 JOHN GALCZYNSKI: Can you classify from
12 what the nature of her job duties are with
13 respect to management?

14 THOMAS SAYERS: I don't understand the
15 question.

16 JOHN GALCZYNSKI: The question is that
17 while Ms. Barnes, the Claimant does not have a
18 managerial title, um you indicated in your
19 testimony that she has managerial functions
20 as, uh there were four to 25 associates at any
21 given time that she supervises, is that
22 correct?

23 THOMAS SAYERS: I didn't label them as
24 managerial functions, but that was part of her
25 job responsibility was supervising other

1 associates.

2 THOMAS SAYERS: But essentially she's
3 not management?

4 THOMAS SAYERS: She's not.

5 JOHN GALCZYNSKI: Okay, so as she is not
6 management and the -- the role of privileged
7 information simply extends to management.

8 My question is at any point did you, um
9 ask, uh Ms. Barnes not to look at documents in
10 your office?

11 KELLY CHARLES-COLLINS: I'm going to
12 object to the, um classifying evidence and --

13 HEARING OFFICER: Uh what tell me your
14 objection again, please?

15 THOMAS SAYERS: Uh not in evidence he
16 testified to, um he said something about the
17 privileged documents only go to management.

18 HEARING OFFICER: Okay, I'm going to
19 allow the question, though because I think the
20 question is relevant. Go ahead and ask the
21 question again, please --

22 JOHN GALCZYNSKI: Okay, the question is
23 that, um while Ms. Barnes was repeatedly, uh
24 well, I'll ask you the question, okay --

25 HEARING OFFICER: Ask the question

1 and --

2 JOHN GALCZYNSKI: Right, that's what I'm
3 -- I'm going to, um do you have customer
4 service personnel including Amy Barnes go back
5 and periodically clean your office?

6 THOMAS SAYERS: Yes.

7 JOHN GALCZYNSKI: And did you ask
8 Ms. Barnes to clean your office on several
9 occasions?

10 THOMAS SAYERS: Yes.

11 JOHN GALCZYNSKI: And is it typical for
12 several people aside from Ms. Barnes to go
13 into that office?

14 THOMAS SAYERS: Sure.

15 JOHN GALCZYNSKI: And --

16 HEARING OFFICER: I'm going to stop you,
17 do me a favor just answer yes or no and not
18 sure because sure or, uh it's hard to
19 understand, you know what that means. Just go
20 ahead and answer yes or no.

21 THOMAS SAYERS: All right.

22 JOHN GALCZYNSKI: And it seems that, um
23 in -- in this event that, uh happened what
24 date was that -- that she, uh you said that
25 she went into your office?

1 THOMAS SAYERS: It was around
2 October 5th.

3 JOHN GALCZYNSKI: All right, and what
4 specific notice did you give Ms. Barnes
5 relating to the fact that she is not to read
6 or look at documentation?

7 THOMAS SAYERS: None.

8 JOHN GALCZYNSKI: None, so Ms. Barnes had
9 no notice of this, is that correct, not to
10 read the document?

11 THOMAS SAYERS: She was never
12 specifically told not to read the document.

13 JOHN GALCZYNSKI: All right, and I'm now
14 going to move from -- from that, um area to
15 questioning you areas that happened quite a
16 bit before then.

17 Um in your earlier testimony you
18 indicated that, uh she had received a number
19 of counseling statements which have been, uh
20 introduced into evidence. And, um how would
21 you characterize Ms. Barnes' performance?

22 THOMAS SAYERS: She had performance
23 problems.

24 JOHN GALCZYNSKI: Okay, can you get
25 specific other than simply using you, could

1 you possibly describe it clearly?

2 THOMAS SAYERS: I've already described it
3 twice under the --

4 JOHN GALCZYNSKI: You can't --

5 THOMAS SAYERS: -- testimony --

6 HEARING OFFICER: You want to ask a
7 specific question go ahead --

8 JOHN GALCZYNSKI: Okay, all right,
9 certainly, I'm going back to the earlier
10 testimony, so I'll have to, um did -- did
11 Ms. Barnes represent Publix to the testing for
12 the financial services, uh on behalf of the
13 store?

14 KELLY CHARLES-COLLINS: Objection --

15 HEARING OFFICER: Uh --

16 JOHN GALCZYNSKI: No, this is not going
17 to performance.

18 HEARING OFFICER: Okay, I don't
19 understand the question what you're asking you
20 need to make it more clear --

21 JOHN GALCZYNSKI: Okay, did she -- did
22 Ms. Barnes, the Claimant represent the
23 Store 86, Publix for testing by regional or
24 corporate for the, uh execution of financial
25 services, one of their job functions is

1 financial services?

2 KELLY CHARLES-COLLINS: Objection,
3 relevance, um --

4 HEARING OFFICER: Okay --

5 THOMAS SAYERS: I testified that she had
6 -- that was part of her job responsibility.

7 JOHN GALCZYNSKI: And I'm getting into
8 performance I'm going to cover the scope.

9 HEARING OFFICER: Go ahead, sir.

10 JOHN GALCZYNSKI: Okay, my question is,
11 um how did she fair in that performance
12 evaluation did your store pass?

13 THOMAS SAYERS: I don't know the
14 evaluation you're speaking of in particular.

15 JOHN GALCZYNSKI: Uh-hmm.

16 THOMAS SAYERS: But if you're asking if
17 there was any performance issues related to
18 her and financial transactions, no, not that I
19 can recall.

20 JOHN GALCZYNSKI: Okay, um did
21 Ms. Barnes make, um problems continuously at
22 the customer service counter?

23 THOMAS SAYERS: She did.

24 JOHN GALCZYNSKI: Can you describe in
25 detail what those problems were?

1 THOMAS SAYERS: I discussed it earlier,
2 but her lack of leadership --

3 JOHN GALCZYNSKI: Okay, what does that
4 mean, can you define what a lack of leadership
5 means --

6 THOMAS SAYERS: Sure, um it might be
7 five o'clock in the afternoon and Amy is not
8 paying attention to what's going on with the
9 Cashers and front service clerks and lines are
10 backing up.

11 And customers might be upset or people
12 aren't carrying out groceries. She might be
13 doodling on a piece of paper not watching what
14 she's doing.

15 JOHN GALCZYNSKI: And there was, uh an
16 incident since we're following down this road
17 with Mr. Nuci, did you hear anything about an
18 incident where, uh a customer came in at
19 eight o'clock in the morning and, uh
20 complained and would refuse to speak to
21 Ms. Laura Rece and would only speak to
22 Mr. Nuci. Did -- were you aware of this?

23 THOMAS SAYERS: Yes.

24 HEARING OFFICER: I'm going to stop you
25 and tell you the same thing I told her, uh a

1 little while ago. Him testifying to what the
2 customer complained --

3 JOHN GALCZYNSKI: No, I'm not --

4 HEARING OFFICER: I'm just telling you it
5 sounds like you're going down that road.

6 JOHN GALCZYNSKI: Okay, no.

7 HEARING OFFICER: And what the customer
8 supposedly said or did not say is hearsay.
9 So, I can't into that it's why --

10 JOHN GALCZYNSKI: Thank you, I appreciate
11 that, no, that's not where I'm going with
12 this. Um what was done, uh with respect to
13 Ms. Barnes, um in terms of that particular
14 event?

15 THOMAS SAYERS: I don't recall, uh I
16 didn't recall if I coached her or Patty
17 coached her on that particular event.

18 JOHN GALCZYNSKI: What were you, um can
19 you recall the incident?

20 THOMAS SAYERS: Yes.

21 JOHN GALCZYNSKI: Can you describe the
22 incident?

23 THOMAS SAYERS: Yeah, uh vaguely I'll do
24 the best I can, uh Amy was opening the office
25 that --

1 HEARING OFFICER: Were you there?

2 THOMAS SAYERS: I was not there.

3 HEARING OFFICER: So, sir, he's

4 testifying to what --

5 JOHN GALCZYNSKI: Okay.

6 HEARING OFFICER: -- he has no firsthand

7 knowledge to.

8 JOHN GALCZYNSKI: All right, so after

9 this incident occurred you -- what did you do

10 with respect to the Claimant, what, uh

11 statements took place, what happened after

12 that?

13 KELLY CHARLES-COLLINS: Objection, asked

14 and answered --

15 THOMAS SAYERS: I don't recall.

16 HEARING OFFICER: Okay.

17 THOMAS SAYERS: I don't recall if I

18 coached Amy on it or if Patty her immediate

19 Supervisor coached her on it. Somebody did

20 speak to her about the incident.

21 JOHN GALCZYNSKI: Okay.

22 THOMAS SAYERS: I don't know the

23 specifics of the incident. I don't recall the

24 specifics.

25 JOHN GALCZYNSKI: All right, um was

1 Ms. Barnes written up at any point for that?

2 THOMAS SAYERS: I don't believe so.

3 JOHN GALCZYNSKI: And you indicated
4 testimony earlier where there was, um
5 Ms. Collins, uh said there was no heavy handed
6 words. Did you threaten Ms. Barnes with
7 termination?

8 THOMAS SAYERS: No.

9 JOHN GALCZYNSKI: At no point you
10 threatened Ms. Barnes was termination?

11 THOMAS SAYERS: Well, I mean on the
12 counseling statements I indicate if future
13 occurrences do occur then, it could lead to a
14 Discharge.

15 That's not a threat that's just a
16 statement of if she fails to improve this is
17 what could happen to her.

18 JOHN GALCZYNSKI: Um you received a
19 request for a transfer by Ms. Barnes. Do you
20 know what the date of that request was?

21 THOMAS SAYERS: I don't know
22 specifically, it was around the end of May.

23 JOHN GALCZYNSKI: All right, and what was
24 the reason Ms. Barnes gave you for -- were you
25 the recipient of this?

1 THOMAS SAYERS: She did say that in the
2 meeting between myself and her and Patty. It
3 was after the incident you're talking about
4 when we sat down and talked about that
5 incident later that day. She said she wanted
6 to transfer.

7 JOHN GALCZYNSKI: Okay.

8 THOMAS SAYERS: She didn't give a reason.

9 JOHN GALCZYNSKI: All right, and what was
10 done, um do you block transfers that are
11 problems?

12 KELLY CHARLES-COLLINS: Objection, cause
13 for speculation --

14 HEARING OFFICER: Okay, well, it's, uh --

15 KELLY CHARLES-COLLINS: I'll strike if --

16 HEARING OFFICER: Okay, one minute,
17 ma'am, let me make a decision on that. Your
18 question is?

19 JOHN GALCZYNSKI: My question is do you
20 block transfers that, uh you deem as problems?

21 THOMAS SAYERS: I --

22 HEARING OFFICER: I know you objected,
23 ma'am, but I am going to allow the question,
24 you can go ahead and answer.

25 THOMAS SAYERS: Right, I do not block

1 transfers, I personally do not as the
2 Store Manager do not want to transfer
3 associates that have performance issues.

4 JOHN GALCZYNSKI: Okay, so in other words
5 to make sure I understand this correctly,
6 those individuals who have performance issues
7 you're stating, uh you do not permit the
8 transfer of those associates, is that correct?

9 KELLY CHARLES-COLLINS: Objection,
10 statement is --

11 THOMAS SAYERS: It's my preference.

12 JOHN GALCZYNSKI: It's your preference,
13 okay, not to enable those transfers, so -- so
14 the transfer request that was put in --

15 THOMAS SAYERS: Uh-hmm.

16 JOHN GALCZYNSKI: -- in, uh May, uh
17 essentially what happened to it was it simply
18 put in the trashcan or what did you do with
19 respect to the request for transfer?

20 THOMAS SAYERS: Uh I emailed it to the
21 store she wanted to go to.

22 JOHN GALCZYNSKI: And you only have
23 one store as of record, is that correct?

24 THOMAS SAYERS: Uh yeah, I have an email
25 here it states that, uh my --

1 JOHN GALCZYNSKI: Which email can you --

2 THOMAS SAYERS: An email to my Assistant,
3 my Administrative Assistant if it's you
4 haven't already done so please send Amy's
5 transfer request to Store 580,
6 Lashonda Johnson, Matt Crawley and
7 Dawn Faven. And I have a copy of the actual
8 transfer that was sent the day after.

9 JOHN GALCZYNSKI: And at no time did you
10 block that?

11 THOMAS SAYERS: No.

12 JOHN GALCZYNSKI: Um did you speak with
13 any other store relating to her transfer?

14 THOMAS SAYERS: Not that I recall.

15 JOHN GALCZYNSKI: And when you dealt with
16 this transfer essentially went into the
17 system, but this was against what you would --
18 would typically do, you viewed her as a
19 problem, is that correct?

20 THOMAS SAYERS: Yes.

21 JOHN GALCZYNSKI: Okay, so as a problem,
22 um communication, did you have communications
23 with various stores or any stores, um relating
24 to, uh her performance issues?

25 THOMAS SAYERS: No.

1 JOHN GALCZYNSKI: And in the course of
2 this six month period that this request for
3 transfer went in did it at any time fall out
4 of the system?

5 THOMAS SAYERS: Objection, that's not in
6 evidence.

7 JOHN GALCZYNSKI: I'm asking --

8 HEARING OFFICER: He's asking a question,
9 I'm going to allow the question, go ahead.

10 JOHN GALCZYNSKI: At any time within the
11 course of that six months did the request for
12 a transfer which is typically done by email --

13 THOMAS SAYERS: Yes.

14 JOHN GALCZYNSKI: -- did that fall out of
15 the system?

16 THOMAS SAYERS: No.

17 KELLY CHARLES-COLLINS: Objection, same
18 objection --

19 HEARING OFFICER: Okay, your objection is
20 noted for the record. I am going to allow the
21 question like I did the same question we had a
22 second ago. Go ahead, sir, answer the
23 question, please.

24 JOHN GALCZYNSKI: And --

25 HEARING OFFICER: When you ask the

1 question he needs to go answer, go ahead.

2 THOMAS SAYERS: No, it did not fall out
3 of the system.

4 HEARING OFFICER: Okay.

5 THOMAS SAYERS: The transfer is open for
6 six months.

7 JOHN GALCZYNSKI: Okay, so in your
8 earlier testimony you indicated that, uh just
9 now that you had a contention with Ms. Barnes'
10 performance. Was that grounds for you to, um
11 in any way impeded or block her, uh transfer?

12 THOMAS SAYERS: Not at all, I would -- I
13 would disclose any performance issues to any
14 receiving store.

15 But I would never -- if they were willing
16 to accept those performance issues and
17 transfer her in I'd welcome the transfer.

18 HEARING OFFICER: At any time did you
19 make Ms. Barnes aware that there was, uh an
20 email that in fact put her transfer through?

21 THOMAS SAYERS: No, there was no email
22 that I'm aware of --

23 JOHN GALCZYNSKI: There was no email, so
24 I'm going to now, uh --

25 THOMAS SAYERS: That I'm aware of.

1 JOHN GALCZYNSKI: Do you read your email,
2 you do?

3 THOMAS SAYERS: I do read my emails.

4 JOHN GALCZYNSKI: So, in your email, uh
5 I'm going to, uh call for that specific piece
6 of evidence which was subpoenaed and --

7 HEARING OFFICER: Which email is that,
8 sir, do you have a copy of it --

9 JOHN GALCZYNSKI: Um yes, I have to find
10 it.

11 AMY E. BARNES: The big binder.

12 JOHN GALCZYNSKI: Thank you.

13 THOMAS SAYERS: I think I know the email
14 that you're speaking of. I can speak of that.

15 HEARING OFFICER: Okay, I'll need to get
16 a copy of it.

17 THOMAS SAYERS: Okay.

18 JOHN GALCZYNSKI: There is only one copy
19 here so there is going to have copies --

20 HEARING OFFICER: What is the date of the
21 email do you know, sir?

22 JOHN GALCZYNSKI: Let me find it.

23 HEARING OFFICER: I may have a --

24 JOHN GALCZYNSKI: The date of the email
25 is Tuesday, March 8th, 2011. It says sent, uh

1 11:08 and it's to Kelly Charles-Collins and
2 the subject is Amy Barnes.

3 KELLY CHARLES-COLLINS: I'm going to
4 object that email that is the incorrect date.
5 You need to read the date of the actual email.

6 JOHN GALCZYNSKI: The date of the email
7 is November 2nd, 2010 at 3:40 p.m. and it's to
8 Mr. Crawley and the subject is Amy Barnes and
9 it is from Tom Sayers, is that --

10 HEARING OFFICER: Okay -- okay.

11 JOHN GALCZYNSKI: My question is in
12 addition to this email, um were there any
13 other emails that you had received relating to
14 a transfer that did in fact go through?

15 THOMAS SAYERS: No, that was the first
16 one and can I go back to the previous question
17 he had asked?

18 HEARING OFFICER: Uh-hmm.

19 THOMAS SAYERS: He asked had I
20 communicated that to Amy as he stated the
21 email was dated November 2nd.

22 Amy was on her suspension at that time
23 she never returned to work. If Amy had
24 returned to work she would have been
25 transferred to another store.

1 But she never returned to work she came
2 back to work on November 3rd, turned in her
3 letter of resignation. That's why the email
4 was never communicated to Amy.

5 JOHN GALCZYNSKI: Um so in other words,
6 no indication by the store -- was that typical
7 that a store would notify an Employee of a
8 transfer?

9 THOMAS SAYERS: Sure.

10 JOHN GALCZYNSKI: Okay, so in this
11 instance who directs that?

12 THOMAS SAYERS: I would -- I would
13 probably --

14 JOHN GALCZYNSKI: So, you would --

15 KELLY CHARLES-COLLINS: You need to let
16 him answer --

17 HEARING OFFICER: Yeah -- yeah --

18 JOHN GALCZYNSKI: I was going to the next
19 question.

20 HEARING OFFICER: Okay, well, let him
21 finish his --

22 THOMAS SAYERS: If you're asking me if
23 I'm going to call her at home while she's on
24 suspension to tell her of a transfer the
25 answer is no.

1 JOHN GALCZYNSKI: Okay.

2 THOMAS SAYERS: I would have told Amy
3 when she returned to work, but she chose not
4 to return to work she just chose to resign.

5 JOHN GALCZYNSKI: Now, how many other
6 notifications of transfer via email that you
7 received relating to Ms. Barnes?

8 THOMAS SAYERS: No.

9 JOHN GALCZYNSKI: No, and so how many
10 stores are you aware of that, um Ms. Barnes
11 applied to?

12 THOMAS SAYERS: The one.

13 KELLY CHARLES-COLLINS: Objection.

14 THOMAS SAYERS: Asked and answered.

15 HEARING OFFICER: Okay, I believe he's
16 answered that more than once --

17 JOHN GALCZYNSKI: Okay, all right, I just
18 want to make sure I nail that down --

19 HEARING OFFICER: Okay, any other
20 questions, sir?

21 JOHN GALCZYNSKI: Yes, um when you were
22 at the front counter on the, um, uh I'm trying
23 to recall --

24 AMY E. BARNES: Was it the 29th? That was
25 Thursday the 29th --

1 KELLY CHARLES-COLLINS: I object to her
2 testifying.

3 AMY E. BARNES: -- Thursday, the 29th.

4 JOHN GALCZYNSKI: I just can't recall the
5 dates.

6 HEARING OFFICER: Okay, what is she
7 referring to --

8 JOHN GALCZYNSKI: She's giving me the
9 date.

10 HEARING OFFICER: Okay.

11 JOHN GALCZYNSKI: The date of, uh --

12 HEARING OFFICER: She can give him the
13 date, uh I don't, I mean, normal -- ma'am, if
14 it was your witness doing the same thing I'd
15 allow the same thing, okay? Okay, sir, do you
16 have any other questions?

17 JOHN GALCZYNSKI: Yes, I do.

18 HEARING OFFICER: Ask them please.

19 JOHN GALCZYNSKI: Um Ms. Barnes had, um
20 been called over by you in front of the store,
21 in front of customer service. You had
22 indicated earlier, I don't have the date,
23 27th, 29th, um and you had indicated that this
24 was --

25 AMY E. BARNES: The 29th.

1 JOHN GALCZYNSKI: The 29th and you had
2 indicated that this was, um, uh private, right
3 in front of the customer service counter, is
4 that correct?

5 THOMAS SAYERS: Initially the a
6 conversation that started right in front the
7 customer service counter --

8 JOHN GALCZYNSKI: Okay, in front of the
9 customer service counter. And, um at that
10 point what directly did you, um say to
11 Ms. Barnes relating to, uh this incident, what
12 did you say to her to, um to deal with it, not
13 a generality, something specific that you had
14 said?

15 THOMAS SAYERS: I went over the -- the
16 conversation that we had. I don't know
17 exactly what you're asking me.

18 JOHN GALCZYNSKI: Okay, what I'm asking
19 is what, uh did you threaten her with
20 termination?

21 THOMAS SAYERS: No.

22 JOHN GALCZYNSKI: And you -- your
23 testimony was you indicated there was nobody
24 there, did you look around?

25 THOMAS SAYERS: As far as customer?

1 AMY E. BARNES: Yes, as far as customers,
2 in other words, you're giving, uh an associate
3 a counseling statement relating to a behavior
4 which you didn't approve, is that correct?

5 KELLY CHARLES-COLLINS: Objection, that
6 misstates the evidence she was not given
7 counseling.

8 HEARING OFFICER: Okay, did --

9 JOHN GALCZYNSKI: I'm going to object to
10 that objection because from what he had
11 testified earlier counseling statements are in
12 writing as well oral.

13 KELLY CHARLES-COLLINS: Objection, there
14 was absolutely no evidence testified to that.

15 HEARING OFFICER: Okay, I'm going to
16 allow the question if he can answer, go ahead
17 and answer it, sir.

18 THOMAS SAYERS: Sure, uh I did not answer
19 a counseling statement to her at that time.
20 As I testified earlier, I coached her.

21 JOHN GALCZYNSKI: Okay, coached.

22 THOMAS SAYERS: I pulled her aside from
23 the customer service counter in front of the
24 lottery machine where there were not other
25 associates or customers around. I coached her

1 in a very professional manner.

2 JOHN GALCZYNSKI: Can you describe what
3 you said specifically? Did you threaten any
4 job changes at that point?

5 (gap in recording 83:16-83:22)

6 JOHN GALCZYNSKI: Um did you tell her to
7 walk out the door?

8 THOMAS SAYERS: No, I told her if she
9 didn't want to accept my coaching she could go
10 work elsewhere.

11 JOHN GALCZYNSKI: Um --

12 THOMAS SAYERS: She started to walk away
13 from me as I testified earlier. She said
14 anyways and as I was talking to her she turned
15 around like she didn't want to listen to me.
16 I told her it was not anyways that she needed
17 to listen to me.

18 JOHN GALCZYNSKI: Did you, uh request
19 that, uh she go into the office to discuss
20 this?

21 THOMAS SAYERS: Yes, as I testified
22 earlier about three to four hours later we
23 went into the office, her, myself and
24 Patty Simmons and we discussed the incident.

25 And she was upset -- Patty told her she

1 was upset about it, so I wanted to speak to
2 her about it.

3 JOHN GALCZYNSKI: Can you indicate
4 specifically what upset means?

5 KELLY CHARLES-COLLINS: Objection calls
6 for speculation.

7 JOHN GALCZYNSKI: No, I'm asking him how
8 he --

9 HEARING OFFICER: I think he can answer
10 how he --

11 THOMAS SAYERS: I wasn't firsthand
12 witness to it, but Patty said she was crying.

13 JOHN GALCZYNSKI: Did you know why?

14 THOMAS SAYERS: Because I had spoke to
15 her.

16 JOHN GALCZYNSKI: All right, and at the
17 point where Ms. Simmons, Patty Simmons and
18 yourself, Tom Sayers and Amy Barnes, the
19 Claimant went into your office do you have any
20 notations or records or recollections to that
21 effect?

22 THOMAS SAYERS: Yes, there is an email
23 that highlights the conversations. Patty took
24 some notes.

25 JOHN GALCZYNSKI: Um can you describe the

1 nature of the relationship, uh or job function
2 that Patty Simmons has in this matter?

3 THOMAS SAYERS: She's the
4 Customer Service Manager.

5 JOHN GALCZYNSKI: Um is she the Manager,
6 uh directly over Amy Barnes?

7 THOMAS SAYERS: She is.

8 JOHN GALCZYNSKI: And, um why if
9 Ms. Simmons, Patty Simmons was her Manager
10 were you called into the matter?

11 THOMAS SAYERS: I didn't come into work
12 until one o'clock that day if I recall. And I
13 was on the front end managing the front end
14 and she was scheduled to come in at Noon.

15 JOHN GALCZYNSKI: And is it typical that
16 you have two meetings after, um a, uh coaching
17 subsequent to that?

18 KELLY CHARLES-COLLINS: Objection.

19 HEARING OFFICER: Okay, what's the
20 question again?

21 JOHN GALCZYNSKI: Is it typical to have
22 another meeting on the heels of the first
23 meeting, is that unusual, does that happen all
24 the time, what -- what happened?

25 KELLY CHARLES-COLLINS: Objection, it's

1 been specified --

2 JOHN GALCZYNSKI: I'm asking a question.

3 HEARING OFFICER: Okay, uh I'm going to
4 allow the question, ma'am, so I'm going to let
5 you answer the question.

6 THOMAS SAYERS: That just depends on the
7 situation, I mean every coaching session is
8 different.

9 HEARING OFFICER: Any other questions?

10 JOHN GALCZYNSKI: Do you have to look at
11 Amy Barnes to speak to her or she does not
12 understand you?

13 THOMAS SAYERS: At times.

14 JOHN GALCZYNSKI: So, when you speak you
15 don't necessarily know if she hears you or
16 not?

17 THOMAS SAYERS: I never had a problem.

18 JOHN GALCZYNSKI: Okay, um so when she
19 answers the phone have you witnessed her
20 answering the phone?

21 THOMAS SAYERS: Yes.

22 JOHN GALCZYNSKI: Okay, does she have a
23 problem listening to people on the phone?

24 THOMAS SAYERS: I haven't heard of a
25 problem.

1 opinion, do you -- so I want you to restate
2 the question, please.

3 JOHN GALCZYNSKI: All right, certainly,
4 um to your knowledge does Ms. Barnes suffer
5 from hearing loss?

6 KELLY CHARLES-COLLINS: Objection, same
7 thing --

8 HEARING OFFICER: Well, I'm going to --
9 even though he's asking if he has knowledge if
10 she has hearing loss, ma'am, that's a
11 different question.

12 THOMAS SAYERS: From some other people
13 have told me that she might have hearing loss,
14 hearing problems. But that's has never been a
15 problem with her performing her job.

16 JOHN GALCZYNSKI: All right, so you
17 didn't have a job performance issue with her.
18 Now, you had indicated earlier in your
19 testimony that there was a problem with one
20 incident with, uh Laura Rece was she the
21 Manager when the, uh she couldn't --

22 HEARING OFFICER: I want you to ask the
23 question instead of making a statement and
24 then, asking --

25 JOHN GALCZYNSKI: All right, I was trying

1 to keep it in context --

2 HEARING OFFICER: No, go ahead.

3 JOHN GALCZYNSKI: Okay, my question is
4 you had indicated in your testimony that
5 one night outside the store past closing off
6 the clock, um Ms. Barnes had, uh cursed to, um
7 Laura Rece and Kevin Kidd relating to her not
8 being able to get her asthma inhaler and --

9 HEARING OFFICER: He never testified to
10 that.

11 JOHN GALCZYNSKI: Okay, I'm sorry, are
12 you --

13 HEARING OFFICER: No.

14 JOHN GALCZYNSKI: -- I'm sorry, did
15 Ms. Barnes have asthma?

16 THOMAS SAYERS: I don't know.

17 JOHN GALCZYNSKI: So, you've never seen
18 her take an inhaler out?

19 THOMAS SAYERS: No.

20 JOHN GALCZYNSKI: Okay, and, um would you
21 be aware that she has asthma?

22 THOMAS SAYERS: I just answered that --

23 HEARING OFFICER: He just answered that
24 question --

25 JOHN GALCZYNSKI: I'm sorry -- I'm sorry.

1 HEARING OFFICER: Okay, um so you had a -
2 - a writing up after this where Mr. Kidd and
3 Laura Rece were at closing. What time is
4 closing for that Publix store?

5 THOMAS SAYERS: Well, first of all it
6 wasn't Kevin Kidd as I testified earlier it
7 was Joe Nucci.

8 JOHN GALCZYNSKI: Okay.

9 THOMAS SAYERS: And what's the question?

10 JOHN GALCZYNSKI: The question is, um
11 that, uh Ms. Barnes was told that, uh she
12 cursed to, uh Laura Rece for this, uh hard
13 lock down relating to the fact that she
14 couldn't get her asthma inhaler --

15 HEARING OFFICER: That is not -- no one
16 has testified to that, sir.

17 JOHN GALCZYNSKI: Okay.

18 HEARING OFFICER: And instead of you
19 making the allegation I want you to ask
20 questions, but I'm not going to allow --

21 JOHN GALCZYNSKI: Okay.

22 HEARING OFFICER: -- questions, there has
23 been no testimony given on -- on that.

24 JOHN GALCZYNSKI: Were you aware that
25 Ms. Barnes was locked out of the store in the

1 presence of Joe Nucci and, uh Laura Rece?

2 KELLY CHARLES-COLLINS: Objection that's
3 not in evidence.

4 HEARING OFFICER: Okay, well, he's
5 testified to what happened and the warning
6 that he was given. So, I'm going to allow the
7 question, go ahead, sir.

8 JOHN GALCZYNSKI: Okay, um the question
9 stands were you aware of that incident where
10 Mr. Nucci and Laura Rece were outside the
11 store closing and, um Ms. Barnes, uh cursed
12 at, um Laura Rece for locking her out of the
13 store, were you aware of this?

14 THOMAS SAYERS: I just testified to that.

15 JOHN GALCZYNSKI: Okay, now, did you
16 punish Ms. Barnes in any way --

17 HEARING OFFICER: I want you to answer --

18 THOMAS SAYERS: I am aware of it.

19 JOHN GALCZYNSKI: Okay, did you punish or
20 take steps towards or against Ms. Barnes
21 relating to this incident?

22 THOMAS SAYERS: Uh nothing, uh formally,
23 uh I believe I verbally coached her.

24 JOHN GALCZYNSKI: What did you do?

25 KELLY CHARLES-COLLINS: Objection, asked

1 and --

2 HEARING OFFICER: He testified he
3 verbally coached her. I don't -- let me ask
4 you, uh I let you go on for almost an hour,
5 sir. How many other questions do you have of
6 this witness we've go --

7 JOHN GALCZYNSKI: Well, uh there is,
8 uh --

9 HEARING OFFICER: I'm just asking can you
10 answer that question, how many?

11 JOHN GALCZYNSKI: Okay, her behavior off
12 the clock is not subject to their control.

13 KELLY CHARLES-COLLINS: I'm going to
14 object and move to strike. He asked --

15 HEARING OFFICER: Okay, I'm asking a
16 question how many more questions do you have
17 for this witness. We have multiple witnesses
18 trying to get their testimony today.

19 JOHN GALCZYNSKI: Uh I'm simply
20 attempting to go through what he --

21 HEARING OFFICER: I'm asking a question.

22 JOHN GALCZYNSKI: I don't know, all I'm
23 giving is as the nature of the problems come
24 up, I can't answer your question.

25 HEARING OFFICER: Okay, go ahead and ask

1 the questions, sir.

2 JOHN GALCZYNSKI: Um in -- in your
3 opinion does Ms. Barnes have any disability?

4 KELLY CHARLES-COLLINS: Objection, beyond
5 the scope of his knowledge and beyond the
6 scope of this hearing.

7 JOHN GALCZYNSKI: And -- and I'm going to
8 object to the objection because, um a
9 Store Manager, um would be charged with the
10 knowledge of when somebody has a disability.

11 HEARING OFFICER: Okay, I'm going to
12 allow the question, I've noted your objection
13 to the record, but I am going to sustain the
14 objection. You can answer that question.

15 THOMAS SAYERS: Okay.

16 JOHN GALCZYNSKI: Are you aware of
17 Ms. Barnes, the Claimant having any
18 disability?

19 THOMAS SAYERS: It's been spoken of that
20 she has partial hearing problems.

21 JOHN GALCZYNSKI: Is that the only
22 problem she has?

23 KELLY CHARLES-COLLINS: Objection, cause
24 for speculation.

25 HEARING OFFICER: Okay, what --

1 JOHN GALCZYNSKI: Anything that you're
2 aware of?

3 THOMAS SAYERS: No.

4 HEARING OFFICER: Okay, any other
5 questions, sir?

6 JOHN GALCZYNSKI: Yes.

7 HEARING OFFICER: Go ahead.

8 JOHN GALCZYNSKI: Um let's go through
9 this, um -- um time when you had, um suspended
10 Ms. Barnes. Now, you had called Ms. Barnes in
11 your office, is that what happened?

12 THOMAS SAYERS: Yes.

13 JOHN GALCZYNSKI: Okay, why did you call
14 Ms. Barnes into your office?

15 THOMAS SAYERS: You're talking about the
16 suspension?

17 JOHN GALCZYNSKI: Yes, I am.

18 THOMAS SAYERS: It had been brought to my
19 attention --

20 JOHN GALCZYNSKI: Wait, who brought it to
21 your attention?

22 THOMAS SAYERS: Another associate.

23 JOHN GALCZYNSKI: Can you name them?

24 THOMAS SAYERS: Nick Boyer.

25 JOHN GALCZYNSKI: And what did

1 Mr. Boyer say to you?

2 THOMAS SAYERS: Amy was having
3 inappropriate conversations with customers
4 about Bank of America.

5 JOHN GALCZYNSKI: Is Mr. Boyer
6 management? What is Mr. Boyer's position?

7 THOMAS SAYERS: He's a Cashier.

8 JOHN GALCZYNSKI: As a Cashier did you
9 request Mr. Boyer, uh to at any time to keep
10 an eye or monitor Amy's behavior?

11 THOMAS SAYERS: Not at all.

12 JOHN GALCZYNSKI: And when you say
13 inappropriate behavior what does that mean
14 exactly, did he give you something definite
15 and certain and clear indicating what the
16 nature of that behavior? So, did you ask any
17 --

18 HEARING OFFICER: Okay -- okay -- okay,
19 that's --

20 JOHN GALCZYNSKI: I just --

21 HEARING OFFICER: No -- no, sir, do me a
22 big favor.

23 JOHN GALCZYNSKI: Okay.

24 HEARING OFFICER: The tone of your voice
25 can you -- will you calm it down just a little

1 bit --

2 JOHN GALCZYNSKI: Sure.

3 HEARING OFFICER: -- please, I can hear
4 you very clear from where I'm at. I'm on the
5 other end of the room and I can hear you very
6 clear. Just calm it down just a little bit,
7 okay --

8 JOHN GALCZYNSKI: Certainly.

9 HEARING OFFICER: -- and the hostile, I
10 mean you may not notice it, but it's, uh it's,
11 uh well, a minute ago was kind of hostile.

12 JOHN GALCZYNSKI: All right.

13 HEARING OFFICER: So, just calm it down
14 just a little bit, okay?

15 JOHN GALCZYNSKI: Okay.

16 HEARING OFFICER: You can ask the same
17 question just a little calmer.

18 JOHN GALCZYNSKI: Okay.

19 HEARING OFFICER: I want you to re-ask
20 the question and let him answer it.

21 JOHN GALCZYNSKI: Did you question
22 Mr. Boyer relating to something specific other
23 than a generic inappropriate behavior?

24 THOMAS SAYERS: Nick had mentioned that
25 Amy was speaking about Bank of America to

1 customers.

2 JOHN GALCZYNSKI: And what did he say?

3 THOMAS SAYERS: What I told you.

4 JOHN GALCZYNSKI: Just that?

5 THOMAS SAYERS: I don't --

6 JOHN GALCZYNSKI: Did he say anything
7 else?

8 THOMAS SAYERS: Not that I can recall.

9 JOHN GALCZYNSKI: Okay, and so Mr. Boyer,
10 um had -- had -- you didn't question him
11 further?

12 (gap in recording 95:42-95:46)

13 JOHN GALCZYNSKI: And after that what
14 happened?

15 THOMAS SAYERS: I brought Amy into my
16 office.

17 JOHN GALCZYNSKI: Brought what?

18 THOMAS SAYERS: Amy into my office.

19 JOHN GALCZYNSKI: And what happened?

20 THOMAS SAYERS: Uh I asked Amy if she was
21 having inappropriate conversations with
22 customers about Bank of America.

23 I -- I had been made aware that, um just
24 five days prior Amy had a large sign posted to
25 the back of her car stating that

1 Bank of America owed her money, something to
2 that effect.

3 And I had concerns as a Store Manager
4 that she is speaking to customer about
5 Bank of America possibly Bank of America
6 customers, um that they might be inappropriate
7 conversations.

8 JOHN GALCZYNSKI: And you didn't,
9 actually, hear any conversation and
10 Mr. Boyer did he state explicated what she
11 said?

12 THOMAS SAYERS: No, not that I recall.

13 JOHN GALCZYNSKI: And your confidence
14 level in Mr. Boyer is medium high, you trust
15 him, what is your perception of --

16 KELLY CHARLES-COLLINS: Objection,
17 relevance?

18 JOHN GALCZYNSKI: Okay.

19 HEARING OFFICER: I'm going to sustain
20 the objection, go ahead --

21 JOHN GALCZYNSKI: You --

22 HEARING OFFICER: No, I sustain the
23 objection, sir, go to your next question.

24 JOHN GALCZYNSKI: Okay, um so then, when
25 you spoke with Ms. Barnes, what did you say

1 exactly?

2 THOMAS SAYERS: I asked her, uh very
3 calmly if she had been having conversations
4 with customers about her issues with
5 Bank of America.

6 JOHN GALCZYNSKI: And did she understand
7 you?

8 THOMAS SAYERS: She didn't answer.

9 JOHN GALCZYNSKI: Um --

10 THOMAS SAYERS: I asked her again.

11 JOHN GALCZYNSKI: -- did she ever ask you
12 to rephrase or, um restate any of your
13 questions?

14 THOMAS SAYERS: No, she said she choose
15 not to answer me because she wanted -- she
16 wanted to have Counsel present or something to
17 that effect.

18 JOHN GALCZYNSKI: And what was your
19 reaction?

20 THOMAS SAYERS: Well, unfortunately based
21 on your previous counsel statement on
22 May 29th I'm going to suspend you for having
23 inappropriate conversations with customers.

24 JOHN GALCZYNSKI: Um so at this time, um
25 she had already been demoted, is that correct?

1 THOMAS SAYERS: Yes.

2 JOHN GALCZYNSKI: And who demoted her?

3 THOMAS SAYERS: I did.

4 JOHN GALCZYNSKI: Okay, and why exactly
5 did you demote her?

6 THOMAS SAYERS: Lack of professionalism
7 and lack of confidentiality.

8 JOHN GALCZYNSKI: Okay, can you, uh
9 specifically enumerate what the scope or
10 definition of lack of professionalism is?

11 THOMAS SAYERS: She was cursing as
12 Managers.

13 JOHN GALCZYNSKI: Off the clock?

14 THOMAS SAYERS: And on.

15 JOHN GALCZYNSKI: When was she cursing on
16 the clock and about what?

17 THOMAS SAYERS: When Kevin Kidd
18 questioned her about reading the emails in my
19 office.

20 JOHN GALCZYNSKI: Any other incidents?

21 THOMAS SAYERS: When she cursed at
22 Managers?

23 JOHN GALCZYNSKI: That's correct.

24 THOMAS SAYERS: The one that we talked
25 about earlier.

1 JOHN GALCZYNSKI: In other words, the one
2 off the clock outside the store?

3 THOMAS SAYERS: The one off the clock
4 outside the store.

5 JOHN GALCZYNSKI: And let's cover the
6 nature of the suspension. You -- the
7 suspension was to begin when, immediately?

8 THOMAS SAYERS: Yes, that day.

9 JOHN GALCZYNSKI: Okay, so I would like
10 to call into evidence the clock, um of Publix
11 which is in the normal course of their
12 business, um records.

13 Which, uh highlight and identify this, uh
14 the period of suspension. So, to continue
15 with this let's first, um go to this, uh
16 record, any objections, Counsel?

17 KELLY CHARLES-COLLINS: Yes, relevance
18 and I know what you're submitting --

19 JOHN GALCZYNSKI: So, I'm admitting, uh
20 Publix relating to, uh documentation of when
21 her suspension began and what her notice was
22 under Publix's normal course of business.
23 Would you like to look at this it's a record -
24 - I'm asking you to look at it is that a
25 Publix record --

1 HEARING OFFICER: You asked would he
2 liked to look at it you didn't ask if --

3 JOHN GALCZYNSKI: Okay, would you look
4 at it?

5 KELLY CHARLES-COLLINS: What date are you
6 referring to?

7 JOHN GALCZYNSKI: Okay, I'm referring to
8 specifically the date, uh where, um the
9 suspension, what was the date that suspension,
10 uh that evening what was that?

11 THOMAS SAYERS: I already stated I don't
12 recall.

13 JOHN GALCZYNSKI: Okay.

14 THOMAS SAYERS: I know the date that it
15 ended, I don't know the date it started.

16 HEARING OFFICER: I'm going to ask you to
17 move on, sir, I can't --

18 JOHN GALCZYNSKI: Okay, the reason I'm
19 going through the suspension specifically to
20 provide dates is, um Mr. Sayers had testified
21 that it was a five day suspension when in fact
22 it ran out to 10. And given your earlier
23 context about the problems --

24 AMY E. BARNES: That day --

25 HEARING OFFICER: I'm going to get her

1 testimony, please tell her -- ma'am, I'm going
2 to get your testimony as soon as I can. Okay,
3 there is a certain order I have to go
4 in, okay?

5 AMY E. BARNES: All right.

6 JOHN GALCZYNSKI: The reason I'm, um
7 bringing this forward to be introduced into
8 evidence is because it provides documentation,
9 uh using Publix normal business practices of
10 their records relating to the, um affects of
11 the suspension with Ms. Barnes.

12 HEARING OFFICER: I've told you, sir, my
13 answer remains the same. I think its'
14 relevant we're going to move on. Do you have
15 any other questions? That's my answer, uh
16 that's my Decision --

17 JOHN GALCZYNSKI: Well, certainly and I
18 can object on the basis of the fact that, uh
19 I'm seeking to demonstrate constructive
20 termination and this is one of the --

21 HEARING OFFICER: Your objection is noted
22 for the record, sir --

23 JOHN GALCZYNSKI: Thank you.

24 HEARING OFFICER: -- go to your next
25 question.

1 JOHN GALCZYNSKI: Okay, um okay, when did
2 you say the suspension started exactly?

3 KELLY CHARLES-COLLINS: Objection, asked
4 and answered.

5 THOMAS SAYERS: I don't recall.

6 JOHN GALCZYNSKI: Okay, you don't recall,
7 what did you say to Ms. Barnes exactly at that
8 point?

9 KELLY CHARLES-COLLINS: Objection, asked
10 and answered.

11 HEARING OFFICER: I'm going to allow the
12 question, do you remember when you suspended
13 her do you remember what you said to her?

14 THOMAS SAYERS: I said, unfortunately I'm
15 going to have to suspend you for five days
16 based off of previous counsel statements on
17 May 29th, inappropriate conversations with
18 customers is going to lead to a five day
19 suspension.

20 JOHN GALCZYNSKI: At this point did you,
21 uh attempt to berate Ms. Barnes?

22 THOMAS SAYERS: No.

23 JOHN GALCZYNSKI: Did you threaten her
24 with termination?

25 (gap in recording 103:02-103:06)

1 JOHN GALCZYNSKI: Did you indicate that
2 she might go again one further down to a
3 bagger?

4 THOMAS SAYERS: No.

5 JOHN GALCZYNSKI: Um so there was no
6 material change in job conditions?

7 THOMAS SAYERS: No.

8 JOHN GALCZYNSKI: And, um did you have
9 the expectation that Ms. Barnes would come
10 back at the conclusion of this suspension for
11 work?

12 THOMAS SAYERS: Yes, she was scheduled to
13 work three days.

14 JOHN GALCZYNSKI: Did you indicate at
15 this point that no one is to contact
16 Ms. Barnes relating to the fact that her
17 transfer had gone through?

18 THOMAS SAYERS: No.

19 JOHN GALCZYNSKI: Did you say -- did
20 Mr. Kidd to the best of your knowledge, uh
21 your Assistant Manager, uh indicate that there
22 is no information relating to this transfer
23 going through at this point?

24 KELLY CHARLES-COLLINS: Objection --

25 HEARING OFFICER: Okay --

1 THOMAS SAYERS: I don't know.

2 HEARING OFFICER: -- you'll have to ask
3 Mr. Kidd when he gets back here what his --
4 what he did or did not do.

5 JOHN GALCZYNSKI: All right, and on -- on
6 the suspension is it typical that you provide
7 a written suspension at that point?

8 THOMAS SAYERS: No.

9 JOHN GALCZYNSKI: Depends on what?

10 THOMAS SAYERS: Depends on the nature of
11 the incident.

12 JOHN GALCZYNSKI: Okay, can you elaborate
13 on that, please --

14 THOMAS SAYERS: At the time I suspended
15 her she was uncooperative, she would not speak
16 with me. I told her that she -- she was going
17 to be suspended for five days and upon her
18 return I would have a counsel statement for
19 her to sign.

20 JOHN GALCZYNSKI: Did Ms. Barnes ask you
21 any questions relating to this?

22 THOMAS SAYERS: No.

23 JOHN GALCZYNSKI: Did she ask you to
24 restate it, nothing?

25 THOMAS SAYERS: Objection, asked and

1 answered.

2 JOHN GALCZYNSKI: Okay, um so you asked
3 her did you ask her to immediately log off?

4 THOMAS SAYERS: Yes.

5 JOHN GALCZYNSKI: Uh so in effect her
6 suspension became immediate from that point?

7 THOMAS SAYERS: Yes.

8 JOHN GALCZYNSKI: Okay, I want to make
9 sure I've got it --

10 KELLY CHARLES-COLLINS: Objection, asked
11 and answered --

12 HEARING OFFICER: Okay -- okay, I'm going
13 to allow the question has been asked and
14 answered, ask the question again.

15 JOHN GALCZYNSKI: The question is, um the
16 suspension began five days from that point
17 where you indicated to Ms. Barnes the meeting
18 was over or, uh however you indicated it. Did
19 it begin immediately from that point?

20 THOMAS SAYERS: Yes.

21 JOHN GALCZYNSKI: Okay, and did any --
22 are you aware of -- of anybody going in and
23 changing schedules after you, uh make
24 notification to what schedules is or
25 suspension or unpaid absence or any of that?

1 KELLY CHARLES-COLLINS: Objection that's
2 not in evidence.

3 JOHN GALCZYNSKI: I'm asking for his
4 awareness of it.

5 HEARING OFFICER: Tell me -- ask that
6 again, please.

7 JOHN GALCZYNSKI: I'm asking for your
8 awareness of any person within management of
9 going into a schedule and making modifications
10 after you had rendered a decision?

11 THOMAS SAYERS: Okay.

12 JOHN GALCZYNSKI: I'm asking you does
13 that happen?

14 THOMAS SAYERS: No, uh I don't understand
15 the question --

16 HEARING OFFICER: I don't understand the
17 question either.

18 JOHN GALCZYNSKI: Okay, the question is,
19 um does anybody within management change
20 materially the schedules after you issue a
21 schedule?

22 KELLY CHARLES-COLLINS: Objection the
23 form of the question, materially?

24 HEARING OFFICER: Um I don't --

25 KELLY CHARLES-COLLINS: I don't think

1 that's in --

2 JOHN GALCZYNSKI: Okay.

3 HEARING OFFICER: I don't understand the
4 question is the problem --

5 JOHN GALCZYNSKI: The question is did
6 anybody go behind Mr. Sayers and change the
7 schedule without his knowledge of
8 authorization who is in a managerial function?

9 KELLY CHARLES-COLLINS: Objection facts
10 not in evidence.

11 HEARING OFFICER: And I'm -- I'm
12 sustaining it because there has been no
13 testimony to that. And when you get -- you
14 can move on and get your, um --

15 JOHN GALCZYNSKI: And then, I'm going to
16 request at this time to be able to call
17 Mr. Sayers back after I have testimony --

18 HEARING OFFICER: You can -- you can, you
19 have the right to do that, sir, no problem,
20 any other questions?

21 JOHN GALCZYNSKI: Yes, um I have here a
22 summary of your question and answer in front
23 of, um Patty Simmons. And this is --

24 HEARING OFFICER: What is that, sir, is
25 this the --

1 JOHN GALCZYNSKI: This is the discussion
2 -- I'm getting into the specifics --

3 HEARING OFFICER: Okay, what was, uh is
4 this, uh transcript from the previous hearing?

5 JOHN GALCZYNSKI: No, this is an email
6 which was -- the emails were subpoenaed from
7 Publix Supermarkets relating to, uh
8 Tom Sayers issuing to Susan Says relating to
9 a, um notation of the discussion between
10 Tom Sayers and Amy Barnes witnessed by
11 Patty Simmons.

12 HEARING OFFICER: I have the email here
13 which email are you referring to?

14 JOHN GALCZYNSKI: The date of the email
15 is March 8th, 2011 at 11:00 a.m. --

16 KELLY CHARLES-COLLINS: That's the date
17 of the email --

18 JOHN GALCZYNSKI: Okay, that was the date
19 of one email from you.

20 KELLY CHARLES-COLLINS: No, that is not
21 the date of the email --

22 JOHN GALCZYNSKI: Okay.

23 KELLY CHARLES-COLLINS: -- the date of
24 the email is right here.

25 JOHN GALCZYNSKI: Okay, if the date is

1 Sunday, May 30th, 2010, 9:34 p.m.

2 HEARING OFFICER: Is this the email --

3 KELLY CHARLES-COLLINS: No, you had it, I
4 can find it for you.

5 HEARING OFFICER: Okay, go ahead, ma'am.

6 KELLY CHARLES-COLLINS: Okay.

7 HEARING OFFICER: What is this email,
8 sir?

9 JOHN GALCZYNSKI: Uh this email is an
10 email, uh to Tom Sayers according to this and
11 subject is Amy Barnes and it says to
12 Susan Says and it says to Kelly -- it looks
13 like it's a forwarded email.

14 HEARING OFFICER: Okay.

15 AMY E. BARNES: So, I can't tell what the
16 earlier email was specifically because it
17 doesn't -- it just indicates the date of this
18 discussion it's not --

19 HEARING OFFICER: Okay, what's your --

20 JOHN GALCZYNSKI: Okay, my question is,
21 um the, um discussion and the trigger of
22 Ms. Barnes requesting a transfer. And I first
23 want to introduce this into evidence, so --

24 HEARING OFFICER: Any objection, um --

25 KELLY CHARLES-COLLINS: I'm going to

1 object it's hearsay. You have the people here
2 you can ask questions about the meeting. Uh
3 Mr. Sayers was present, Ms. Simmons was
4 present and Ms. Barnes was present you can ask
5 them questions.

6 JOHN GALCZYNSKI: Okay.

7 KELLY CHARLES-COLLINS: Otherwise the
8 document is --

9 HEARING OFFICER: I want to enter the
10 document, the email in the record I believe
11 it's a business record. I am going to enter
12 the document into the record.

13 Um I've noted your objection, ma'am, but
14 I am going to enter the document into the
15 record. Uh it will be entered into the record
16 as Claimant's Packet Exhibit 2, an email from
17 May 30th, 2010, next question, sir.

18 JOHN GALCZYNSKI: Okay, in this, um
19 discussion, this three party, uh calling in
20 Ms. Patty Sayers as a witness, you state here
21 and I want to make sure this is correct, that
22 you would not do a transfer unless it was due
23 to a mileage issue, is that correct?

24 THOMAS SAYERS: I give an example of why
25 we would do a transfer.

1 JOHN GALCZYNSKI: Okay, is that
2 definitive?

3 THOMAS SAYERS: No.

4 JOHN GALCZYNSKI: Okay, can you
5 elaborate?

6 KELLY CHARLES-COLLINS: Objection,
7 elaborate on what?

8 HEARING OFFICER: What was your --

9 JOHN GALCZYNSKI: I'm trying to get him
10 to elaborate on why he would not do a
11 transfer. It was indicated earlier by him
12 that he would not. I'm simply trying to cover
13 the reasons for him so doing.

14 KELLY CHARLES-COLLINS: Objection --

15 HEARING OFFICER: Okay, sir, I'm moving
16 on to the next question.

17 JOHN GALCZYNSKI: Okay.

18 HEARING OFFICER: I'm sustaining that
19 objection we're going to move on, what's your
20 next question, sir?

21 JOHN GALCZYNSKI: Okay, my next question
22 is this, um why was Patty Simmons called in to
23 this meeting between you and Amy?

24 THOMAS SAYERS: Because Patty brought to
25 my attention that Amy was upset and I said,

1 well, Amy did not bring it to my attention she
2 was upset. I said, well, the three of us will
3 sit down and talk about it.

4 JOHN GALCZYNSKI: Okay, how upset was
5 she, could you visibly see her being upset?

6 KELLY CHARLES-COLLINS: Objection, asked
7 and answered.

8 HEARING OFFICER: Okay, I'm going to --
9 you know, it's -- I'm going to -- it's
10 'til 3:00 now, sir --

11 JOHN GALCZYNSKI: Okay.

12 HEARING OFFICER: -- we've got to, uh
13 I've got to note something before I let you
14 continue on with these questions. How many
15 other questions do you have for this witness?

16 JOHN GALCZYNSKI: Again, I'm going to
17 give you the same answer --

18 HEARING OFFICER: Okay, you --

19 JOHN GALCZYNSKI: -- I'm going to --

20 HEARING OFFICER: -- you're not going to
21 give me an answer is what you're saying?

22 JOHN GALCZYNSKI: What -- this is -- I'll
23 try to give you an answer to the best of my
24 ability. I am simply trying to cover the --
25 the, um the reasoning that, um or the

1 circumstances under which, uh Ms. Barnes felt
2 that she was being pushed out of Publix by
3 Mr. Sayers, that's it --

4 HEARING OFFICER: Okay, all right, well,
5 you can direct that to Ms. Barnes when you get
6 her testimony and when we get her testimony.
7 You can call him back for rebuttal you can.

8 But right now do you have any other
9 questions regarding his previously testimony
10 you want to ask at this time?

11 JOHN GALCZYNSKI: Uh if you could, uh
12 provide me one minute I will look at this and
13 I will answer that question. Um yes, I have a
14 few more questions relating --

15 HEARING OFFICER: Go ahead.

16 JOHN GALCZYNSKI: -- specifically to his
17 testimony that he initially began with.

18 HEARING OFFICER: Go ahead.

19 JOHN GALCZYNSKI: Um on direct you had
20 stated that, um in response to Ms. Collins'
21 question that there was no fear, anger,
22 humiliation or embarrassment sustained by the
23 Claimant, Amy Barnes in your discussion?

24 KELLY CHARLES-COLLINS: Objection,
25 misstates the evidence --

1 THOMAS SAYERS: No.

2 JOHN GALCZYNSKI: Did you ever, um see
3 that Ms. Barnes was, um upset in any way, um
4 relating to how she perceived you dealing with
5 her?

6 KELLY CHARLES-COLLINS: Object, answered.

7 JOHN GALCZYNSKI: Okay, um --

8 HEARING OFFICER: No, I'm going to rule
9 on your objection, ma'am. I'm going to allow
10 the question because at this point I'm not
11 sure it has been answered. So, I'm going to
12 make sure it's on the record, go ahead.

13 THOMAS SAYERS: Repeat the question?

14 JOHN GALCZYNSKI: Yes, um did you have
15 any, um experience where you could visibly see
16 Ms. Amy Barnes, the Claimant, uh having a, um
17 an emotional reaction that -- that, uh was not
18 typical -- I don't know how to phrase this
19 exactly it's, uh --

20 THOMAS SAYERS: That's enough I can
21 answer it.

22 JOHN GALCZYNSKI: Okay.

23 KELLY CHARLES-COLLINS: No, you --

24 HEARING OFFICER: You need to properly
25 form the question, sir.

1 JOHN GALCZYNSKI: Okay, my question is
2 did you see Ms. Barnes' behavior in any of
3 your encounters with Ms. Barnes that -- that
4 indicated that she appeared humiliated, hurt,
5 uh alienated, um any of that?

6 THOMAS SAYERS: No.

7 JOHN GALCZYNSKI: How did you hand, uh
8 Ms. Barnes the notes from this, uh discussion
9 between Patty, uh Sayers, yourself and
10 Amy Barnes?

11 THOMAS SAYERS: What notes?

12 JOHN GALCZYNSKI: These specific --

13 THOMAS SAYERS: Um she was on a register
14 and I came back up behind her.

15 JOHN GALCZYNSKI: Okay, so you came up
16 behind her and --

17 THOMAS SAYERS: I tapped her on the
18 shoulder if that's what you're referencing to
19 touching her.

20 JOHN GALCZYNSKI: Did you say anything to
21 her prior to this or you just came up and
22 tapped her behind the -- on the shoulder?

23 THOMAS SAYERS: I don't recall saying
24 anything.

25 JOHN GALCZYNSKI: Okay, and, um would you

1 say that subsequent to this meeting that, um
2 Ms. Barnes having tendered a request for a
3 transfer, um was taking it personally or felt
4 that, uh somehow you were, um not fair or that
5 -- that, uh there was an alienation?

6 KELLY CHARLES-COLLINS: Objection, vague
7 and compound.

8 JOHN GALCZYNSKI: Okay.

9 HEARING OFFICER: I believe it was
10 compound, um --

11 JOHN GALCZYNSKI: Sorry.

12 HEARING OFFICER: One question at a time,
13 sir.

14 JOHN GALCZYNSKI: Okay, did you feel
15 after this, uh meeting between Patty Sayers,
16 yourself and Amy Barnes that, uh Amy Barnes
17 evidenced, um alienation?

18 KELLY CHARLES-COLLINS: Objection, what
19 meeting?

20 JOHN GALCZYNSKI: It's highlighted at
21 this one.

22 HEARING OFFICER: Can you be specific on
23 which meeting you're referring to?

24 JOHN GALCZYNSKI: Yes, the one that we
25 just discussed. Um Sunday, May 30th,

1 9:34 p.m. is that correct? That's what is on
2 here.

3 THOMAS SAYERS: I believe it was Saturday
4 the day of the incident.

5 JOHN GALCZYNSKI: Okay, Saturday that's
6 what I'm referring to, Saturday.

7 HEARING OFFICER: Okay, now, ask the
8 question, so --

9 JOHN GALCZYNSKI: My question is did you
10 perceive Amy Barnes as being alienated
11 subsequent to that meeting?

12 KELLY CHARLES-COLLINS: Objection asked
13 and answered.

14 HEARING OFFICER: I'm not sure it has
15 been asked and answered, ma'am. I'm going to
16 allow the answer, go ahead, sir.

17 THOMAS SAYERS: No.

18 JOHN GALCZYNSKI: Did you see at any
19 point that she felt hurt, emotionally?

20 THOMAS SAYERS: Before that meeting?

21 JOHN GALCZYNSKI: No, after this meeting.

22 THOMAS SAYERS: I had stated earlier that
23 she was crying, Patty noticed she was crying.
24 Patty brought it to my attention.

25 She came into my office a couple of hours

1 later and she was not upset at that time. As
2 the conversation occurred between her and I --
3 I could see her getting upset.

4 JOHN GALCZYNSKI: Okay, and did you see,
5 um behaviorally anything that, um that in the
6 six months since then, that indicated she
7 wanted to not transfer?

8 THOMAS SAYERS: No, she never brought it
9 back up.

10 JOHN GALCZYNSKI: Okay, I'm done with my
11 questions.

12 HEARING OFFICER: Okay, at this point,
13 does anyone need a bathroom break?

14 JOHN GALCZYNSKI: Bathroom break?

15 HEARING OFFICER: Okay, because I need
16 one to be honest with you, so we're going to
17 take one.

18 KELLY CHARLES-COLLINS: Okay.

19 HEARING OFFICER: Uh we're going to take
20 a five minute bathroom break. And then, I
21 will call -- call Mr. Kidd in and begin to get
22 his testimony.

23 Um so you can go back to the lobby and
24 you can go out to the lobby and use the
25 restroom and they'll let you back in or I'll

1 come out and get you either way, I'm sorry?

2 INTERPRETER CELIO BEST: What time?

3 HEARING OFFICER: Uh about five minutes,
4 four or five minutes just as quick as
5 possible.

6 KELLY CHARLES-COLLINS: Do you want me to
7 get Kevin?

8 HEARING OFFICER: No, I've got to go out
9 and get him.

10 KELLY CHARLES-COLLINS: Okay.

11 HEARING OFFICER: So, if you go to the
12 restroom I'll come out and get you as well.
13 They probably won't let you come back by
14 yourself. If they let you I've got to go get
15 Mr. Kidd, so -- so you can go back to the
16 lobby.

17 KELLY CHARLES-COLLINS: Okay.

18 HEARING OFFICER: Okay.

19 INTERPRETER CELIO BEST: I'll use the
20 bathroom.

21 KELLY CHARLES-COLLINS: That's funny
22 because we're thinking that --

23 INTERPRETER CELIO BEST: Oh okay, that's
24 fine.

25 HEARING OFFICER: And while I'm out of

1 the room please don't discuss this case --
2 please don't discuss the case --

3 INTERPRETER CELIO BEST: I understand.

4 HEARING OFFICER: Okay, the lobby is
5 right out there that way where y'all came in,
6 yeah. Come on in we're going on record the
7 time is now --

8 (gap in recording 124:35-124:37)

9 HEARING OFFICER: -- y'all come in and
10 have a seat. Okay, sir, your name for the
11 record?

12 KEVIN KIDD: Kevin Kidd.

13 HEARING OFFICER: And how do you spell
14 your last name?

15 KEVIN KIDD: K-I-D-D.

16 HEARING OFFICER: And your title with the
17 company?

18 KEVIN KIDD: Assistant Store Manager.

19 HEARING OFFICER: And do you swear or
20 affirm that the testimony you're about to give
21 is the truth, the whole truth and nothing but
22 the truth so help you God?

23 KEVIN KIDD: I do.

24 HEARING OFFICER: I know that I'm
25 recording the hearing, but I have to ask you

1 if you're recording the hearing?

2 KEVIN KIDD: No, I'm not.

3 HEARING OFFICER: Okay -- okay, Mr. Kidd,
4 regarding the letter of resignation, did --
5 let me see if I've got a copy here I've got to
6 find -- find what I did with it now. This
7 document right here.

8 KEVIN KIDD: Uh-hmm.

9 HEARING OFFICER: Did you instruct
10 Ms. Barnes to write that?

11 KEVIN KIDD: I advised her that she,
12 yeah, to write a letter -- she wanted to put
13 it on -- to make it official put it on -- to
14 document it.

15 HEARING OFFICER: Did you tell her what
16 to write?

17 KEVIN KIDD: No, I did not.

18 HEARING OFFICER: Did you tell her to
19 write what's written there?

20 KEVIN KIDD: No, I did not, actually, I
21 was not present when she wrote it.

22 HEARING OFFICER: Did --

23 KEVIN KIDD: I walked away.

24 HEARING OFFICER: -- did you -- did you
25 pressure her in any way to resign?

1 KEVIN KIDD: No, I did not.

2 HEARING OFFICER: Did she just walk up to
3 you and tell you she was resigning?

4 KEVIN KIDD: Yes, actually, I was
5 standing at customer service, I was actually
6 in the store they paged me to customer
7 service.

8 Um Amy then, approached me and told me
9 that she wanted to resign. I told her, you
10 know, if possible could she document it.

11 Um and I will walk -- because I remember
12 Tom I saw Tom at a distance and I went to tell
13 Tom that Amy was here to resign.

14 HEARING OFFICER: Anything else you want
15 to tell me about?

16 KEVIN KIDD: No.

17 HEARING OFFICER: Okay, Ms. Collins, you
18 want to go ahead and ask your questions,
19 Ms. Collins --

20 KELLY CHARLES-COLLINS: Yes, um was there
21 an incident, um that Ms. Barnes notified you
22 about regarding reading an email on
23 Tom Sayers' desk?

24 KEVIN KIDD: Yes.

25 KELLY CHARLES-COLLINS: Tell me about

1 that?

2 KEVIN KIDD: Um she approached me about
3 the fact that she read an email that said
4 that, um we were going to demote her to --
5 basically she said she was going to demoted,
6 um and she wanted to know why because she felt
7 that she had been doing her job.

8 Um I told her that I was not aware of the
9 situation, what she was speaking about because
10 I was -- that was the first I had heard of it.
11 Um but I told her I would see what I could
12 find out and --

13 KELLY CHARLES-COLLINS: And was that the
14 only conversation you had with her about that
15 email?

16 KEVIN KIDD: No, there was a secondary
17 conversation about that email, um when Laura
18 came to work I sat down with Amy and addressed
19 the situation of her reading, um confidential
20 documentation in the Store Manager's desk.

21 The first conversation I asked her where
22 did she see this email? So, I decided to have
23 a conversation about that you shouldn't go
24 around reading information that was not for
25 you.

1 Um during that, uh situation Ms. Barnes
2 got upset, used words of profanity. And I
3 told her that she needed to go home.

4 KELLY CHARLES-COLLINS: What did she tell
5 you?

6 KEVIN KIDD: Her exact words?

7 KELLY CHARLES-COLLINS: Uh-hmm.

8 KEVIN KIDD: I think it was you're full
9 of shit.

10 KELLY CHARLES-COLLINS: That was in
11 reference to you asking her about reading the
12 email on the desk?

13 KEVIN KIDD: That is correct.

14 KELLY CHARLES-COLLINS: Um are associates
15 supposed to read anything that is on the
16 Store Manager's desk?

17 KEVIN KIDD: No.

18 JOHN GALCZYNSKI: Objection.

19 HEARING OFFICER: What's your objection,
20 sir?

21 JOHN GALCZYNSKI: My objection is that,
22 um testimony earlier indicated that she was
23 never given notice.

24 If you look at the policy handbook
25 entered into evidence there is nothing to that

1 affect.

2 HEARING OFFICER: Okay, I'm going to
3 allow the question, I'll note your objection
4 for the record.

5 JOHN GALCZYNSKI: Certainly.

6 HEARING OFFICER: Any other questions,
7 ma'am?

8 KELLY CHARLES-COLLINS: Is it common
9 sense that you're not supposed to read
10 anything that's on the Store Manager's desk
11 that's not addressed to you?

12 KEVIN KIDD: Yes, and there might even,
13 actually, be policy I really don't know. But
14 I know there is confidentiality policies and,
15 uh -- it's not your office it's not your
16 paperwork. It's common knowledge. Because if
17 you were saw an Employee's file sitting
18 around --

19 KELLY CHARLES-COLLINS: Was there an
20 incident, um in later in October where you and
21 Patty Simmons had to speak to Ms. Barnes, uh
22 about a customer complaint?

23 KEVIN KIDD: Yes.

24 KELLY CHARLES-COLLINS: Um how -- without
25 saying what the customer said can you tell us

1 about the discussion you had with Ms. Barnes?

2 KEVIN KIDD: Yes, um we sat down,
3 basically, we spoke about her role as a
4 Cashier and improper and proper conversations
5 we should have about customers and not judging
6 their shopping habits.

7 JOHN GALCZYNSKI: I'm going to object I
8 don't know when this is can you --

9 HEARING OFFICER: You and Ms. Barnes had
10 this conversation?

11 KEVIN KIDD: Yes, well, it was, yes, me
12 and, Ms. Barnes and Patty Simmons.

13 KELLY CHARLES-COLLINS: Did this happen
14 on or about October 22nd?

15 KEVIN KIDD: Yes.

16 KELLY CHARLES-COLLINS: And was this
17 asked or did Ms. Barnes had already been
18 reclassified to the position of Cashier?

19 KEVIN KIDD: I believe so.

20 KELLY CHARLES-COLLINS: Um did she --
21 what did she say about the conversation, what
22 did Ms. Barnes say about the conversation she
23 had?

24 KEVIN KIDD: From what I remember is she,
25 basically, she really didn't know what she did

1 wrong.

2 I can't remember, I think the discussion
3 I had with Patty afterwards was like that's
4 just not -- that's not really good that she
5 doesn't know what she did wrong. The customer
6 was offended by the situation. Not the
7 customer, but the other customer was offended.

8 KELLY CHARLES-COLLINS: And was this the
9 first time that Ms. Barnes had been spoken to
10 about having these types of inappropriate
11 conversations?

12 KEVIN KIDD: No, it was not.

13 HEARING OFFICER: Sir, any questions?

14 JOHN GALCZYNSKI: Yes, um you indicated
15 that there was several occasions, is that
16 correct, that, uh Ms. Barnes was pulled aside
17 for, uh coaching --

18 KELLY CHARLES-COLLINS: Objection,
19 that's --

20 HEARING OFFICER: I don't --

21 JOHN GALCZYNSKI: Did you indicate -- are
22 you aware that Ms. Barnes was pulled aside for
23 coaching?

24 KEVIN KIDD: Yes.

25 JOHN GALCZYNSKI: Did you pull aside

1 Ms. Barnes for coaching?

2 KEVIN KIDD: Yes.

3 JOHN GALCZYNSKI: Were you aware, um did
4 you at any point, uh prior to this incident
5 with the email on the desk notify Ms. Barnes
6 not to read correspondence?

7 KEVIN KIDD: Did I personally --

8 JOHN GALCZYNSKI: Yes, you personally?

9 KEVIN KIDD: No.

10 JOHN GALCZYNSKI: Okay, and, um do you
11 know are you familiar with Publix policy
12 relating to, uh confidentiality?

13 KEVIN KIDD: Am I familiar with it?

14 JOHN GALCZYNSKI: Yes.

15 KEVIN KIDD: I would say familiar, if you
16 read it to me I would --

17 JOHN GALCZYNSKI: Okay, and, um is this
18 policy evidenced by this, uh document which
19 has been introduced into evidence?

20 KELLY CHARLES-COLLINS: Objection, if you
21 have a specific, uh policy you'd like --

22 HEARING OFFICER: Okay, I want to rule on
23 the objection, your objection, ma'am?

24 KELLY CHARLES-COLLINS: That if he has a
25 specific policy he can look at it and I can

1 just give him the whole --

2 HEARING OFFICER: Okay, is there specific
3 you want him to look at --

4 JOHN GALCZYNSKI: Yes, my first question
5 is, one, this document -- is this the
6 controlling document?

7 KELLY CHARLES-COLLINS: Objection, it
8 calls for speculation, controlling what?

9 JOHN GALCZYNSKI: Controlling Publix
10 policy, this document?

11 KELLY CHARLES-COLLINS: I'm not
12 testifying.

13 HEARING OFFICER: Okay -- okay, your
14 question is the Employee handbook the
15 controlling document that's a vague question.

16 JOHN GALCZYNSKI: Okay, what do you use
17 as a standard for behavior in dealing with
18 associates at Publix related to their scope
19 function, uh activities, et cetera?

20 KEVIN KIDD: Okay, we have a rule of
21 acceptable conduct.

22 JOHN GALCZYNSKI: Which is where?

23 KEVIN KIDD: Associates should have a
24 copy of it --

25 JOHN GALCZYNSKI: Okay.

1 KEVIN KIDD: -- in the associate
2 handbook. There is also an MRL which is
3 Managers retail library.

4 JOHN GALCZYNSKI: Okay, and, um this
5 retail library that you eluded to is outside
6 of the scope of this --

7 KEVIN KIDD: That is correct.

8 JOHN GALCZYNSKI: Okay, um there are a
9 number of, uh categories in this, uh associate
10 handbook --

11 HEARING OFFICER: What's the question,
12 sir?

13 KEVIN KIDD: Yes.

14 JOHN GALCZYNSKI: I was getting to the
15 question. And I want to -- I want to cover,
16 um had you, uh in -- in discussing or -- or,
17 uh having a discussion with, uh Ms. Barnes
18 after she was, uh reclassified where she said
19 you are full of shit. Um what happened, what
20 did you say to Ms. Barnes prior to her making
21 that assertion?

22 KEVIN KIDD: What do you mean?

23 JOHN GALCZYNSKI: What did -- if you made
24 a statement what was the --

25 KEVIN KIDD: There was a --

1 JOHN GALCZYNSKI: -- what was the
2 statement that you made that Ms. Barnes
3 responded to you are full of shit?

4 KEVIN KIDD: Oh --

5 JOHN GALCZYNSKI: So, did you think this
6 had any significance?

7 KELLY CHARLES-COLLINS: Objection vague.

8 HEARING OFFICER: Okay, all right, you're
9 -- you're questioning, you want to establish
10 that she was provoked and used profanity to --

11 JOHN GALCZYNSKI: That's correct.

12 HEARING OFFICER: -- so therefore
13 profanity was okay? That's what you're trying
14 to state, is that correct, sir?

15 JOHN GALCZYNSKI: What I'm saying is she
16 complained about job conditions and she was
17 provoked, yes.

18 HEARING OFFICER: Okay, that has not been
19 established. There has been no testimony on
20 that. You have the right to ask your client,
21 Ms. Barnes about that when you get her
22 testimony and the witnesses you plan to call.

23 JOHN GALCZYNSKI: Okay.

24 HEARING OFFICER: But at this point it's
25 not relevant and we're going to move on.

1 JOHN GALCZYNSKI: Okay, um did you see
2 Ms. Barnes in any way as disabled?

3 KEVIN KIDD: I see Ms. Barnes in
4 any way

5 JOHN GALCZYNSKI: Yes, does she have a
6 disability?

7 KELLY CHARLES-COLLINS: Objection, calls
8 for speculation.

9 HEARING OFFICER: Okay, I'm going to
10 allow the question. Can you -- if she was one
11 of your Employees did you -- did you think she
12 was disabled as to a disability?

13 KEVIN KIDD: No, because we had to make
14 no reasonable accommodations for her to
15 complete her job tasks. So, I saw no
16 disability as to her doing her job.

17 HEARING OFFICER: Next question, sir.

18 JOHN GALCZYNSKI: Okay, next question, um
19 are you aware that Ms. Barnes is hard of
20 hearing?

21 KEVIN KIDD: Yes, she mentioned that.

22 JOHN GALCZYNSKI: Okay, did other people
23 mention this?

24 KEVIN KIDD: She mentioned it, I don't
25 think it was a topic of discussion.

1 JOHN GALCZYNSKI: Could you see in
2 talking to her that you had to talk to her
3 face to face, did -- could you relate to this
4 as actual rather than imagined?

5 KELLY CHARLES-COLLINS: Objection, calls
6 for speculation.

7 HEARING OFFICER: And I don't -- I think
8 the question is -- is -- is -- is -- it
9 doesn't make any sense.

10 JOHN GALCZYNSKI: Okay, what I'm asking
11 is, um her behavior would it indicate in fact
12 that was correct, that she had a hearing
13 issue?

14 THOMAS SAYERS: She had mentioned to me
15 that she had a hearing issue. She had asked
16 me when I speak to her to look at her which I
17 did.

18 But as to her job performance which is
19 what I engage a disability is we had to make
20 no reasonable accommodations. She did her --
21 she performed her job.

22 So, her disability or I guess limited of
23 hearing or speaking never really became a
24 topic.

25 JOHN GALCZYNSKI: Had you seen

1 Ms. Barnes use an asthma inhaler?

2 KEVIN KIDD: Uh no.

3 JOHN GALCZYNSKI: Did you -- are you
4 aware if she has asthma?

5 (gap in recording 137:10-137:18)

6 JOHN GALCZYNSKI: Um were you aware of
7 any transfers that went through prior to, um,
8 uh the suspension of Ms. Barnes?

9 KELLY CHARLES-COLLINS: Objection it --

10 HEARING OFFICER: Okay, uh --

11 JOHN GALCZYNSKI: Okay, what I'm asking
12 is there was an -- are you aware of an email
13 that indicates that a transfer had gone
14 through?

15 KEVIN KIDD: I was aware that Amy --
16 there was an email of Amy seeking a transfer.

17 JOHN GALCZYNSKI: Were you aware there
18 was an email indicating that a transfer in
19 fact went through?

20 KEVIN KIDD: No.

21 JOHN GALCZYNSKI: I'd like to call into
22 evidence the email that, uh shows --

23 HEARING OFFICER: Was he -- was he copied
24 on the email?

25 KEVIN KIDD: Was I a recipient of the

1 email?

2 KELLY CHARLES-COLLINS: No.

3 JOHN GALCZYNSKI: Um okay, let's get to
4 that, um as an Assistant Store Manager --

5 KEVIN KIDD: Uh-hmm.

6 JOHN GALCZYNSKI: -- is it typical by way
7 of either shift notes or some other
8 communication that you be informed of the
9 status?

10 KEVIN KIDD: Status?

11 JOHN GALCZYNSKI: If an associate is
12 suspended would you know?

13 KEVIN KIDD: Uh more than likely, but not
14 always.

15 JOHN GALCZYNSKI: Would you have an
16 obligation to pull up whose is on duty or what
17 the general roles are of people at that point?

18 KEVIN KIDD: An obligation, no.

19 JOHN GALCZYNSKI: So, it's not -- there
20 is no passage of this person is suspended,
21 these people -- none of that?

22 KEVIN KIDD: No.

23 JOHN GALCZYNSKI: So, when there is a
24 problem how are you given notice?

25 KEVIN KIDD: Being brought to my

1 attention, if it was a Department Manager
2 situation --

3 HEARING OFFICER: Okay, we're going to
4 have to stop you can't hear over that, it's
5 not going to be heard on the tape.

6 JOHN GALCZYNSKI: You've got to -- you've
7 got to stop, okay.

8 KEVIN KIDD: What was the question?

9 JOHN GALCZYNSKI: Okay, the question is
10 your awareness of, um when there are, um
11 personnel issues or --

12 KEVIN KIDD: How does it come to my
13 attention?

14 JOHN GALCZYNSKI: Yes.

15 KEVIN KIDD: Um usually the situation
16 escalates past the Department Manager. So,
17 either the Department Manager brings it to my
18 attention or an associate situation.

19 JOHN GALCZYNSKI: Have you ever been
20 berating towards Ms. Barnes?

21 KEVIN KIDD: No.

22 JOHN GALCZYNSKI: Have you asked
23 questions that you wouldn't listen to an
24 answer?

25 KEVIN KIDD: No, I wouldn't ask a

1 question and not --

2 JOHN GALCZYNSKI: If she ever --

3 KELLY CHARLES-COLLINS: Can you let him
4 answer --

5 HEARING OFFICER: Yeah, I'm sorry he
6 needs to finish his answer and not cut him
7 off.

8 JOHN GALCZYNSKI: Okay, sorry.

9 KEVIN KIDD: I would not ask a question
10 that I didn't want an answer to, so no.

11 JOHN GALCZYNSKI: And you make
12 assumptions when you hear from one party to
13 another party as to the correctness or
14 validity of whatever it is that they have to
15 say prior to you confronting an associate?

16 KEVIN KIDD: No.

17 JOHN GALCZYNSKI: So, how do you handle
18 that?

19 KELLY CHARLES-COLLINS: Objection,
20 relevance.

21 JOHN GALCZYNSKI: How do you handle it
22 with Ms. Barnes?

23 KELLY CHARLES-COLLINS: Objection,
24 relevance.

25 HEARING OFFICER: Okay, how is this

1 question relevant to --

2 JOHN GALCZYNSKI: Where I'm trying to get
3 at is when Ms. Barnes made the comment that,
4 uh Kevin Kidd, uh the full of shit remark, he
5 -- what -- what pushed her? I'm trying to get
6 at specifically what he did to push her to be
7 so --

8 HEARING OFFICER: Ask him what he --
9 then, ask him what he did before --

10 JOHN GALCZYNSKI: Okay, that's what I'm
11 trying to --

12 HEARING OFFICER: Before she made the
13 comment that you were full of S-H-I-T.

14 KEVIN KIDD: Uh-hmm.

15 HEARING OFFICER: What comment did you
16 make to her --

17 KEVIN KIDD: I don't recall it being a
18 specific comment. We were discussing her
19 looking on the desk and she kept switching
20 topics.

21 And I think it came out of frustration
22 because she's talking about one thing and I
23 kept redirecting her back to this is -- it's
24 unacceptable for you to go through the
25 paperwork on a Store Manager's desk.

1 I didn't make any specific comment, I did
2 not -- you can ask her I did not belittle her
3 or -- she just got upset because she didn't
4 agree with what I was telling her and told me,
5 you're full of S-H-I-T --

6 JOHN GALCZYNSKI: Did you write her up
7 for that?

8 KEVIN KIDD: No, I sent her home.

9 JOHN GALCZYNSKI: You sent her home?

10 KEVIN KIDD: Yes.

11 JOHN GALCZYNSKI: And you admitted
12 earlier that she had no prior knowledge
13 relating to reading of documents --

14 KEVIN KIDD: Objection, misstating of the
15 facts.

16 HEARING OFFICER: Yeah, I don't know if
17 he said -- let the whole question come out
18 before I make a ruling on it, go ahead, sir.

19 JOHN GALCZYNSKI: Okay, um I'm going to
20 reiterate your earlier question at the risk of
21 being, uh going through the same objection.

22 Um did you, um did you notify Ms. Barnes
23 prior to this incident of there is a no
24 reading of managerial documentation?

25 KELLY CHARLES-COLLINS: Objection, asked

1 and answered.

2 JOHN GALCZYNSKI: That's what I said, I'm
3 going back to that.

4 HEARING OFFICER: Okay, I'm going to
5 allow the question, objection overruled.

6 KEVIN KIDD: From what I remember what
7 you asked me was, uh did I personally tell her
8 she was not allowed to read the
9 Store Manager's desk -- documents on the
10 Store Manager's desk before this --

11 JOHN GALCZYNSKI: Yes.

12 KEVIN KIDD: -- I don't go around and
13 personally tell everyone not to read --

14 JOHN GALCZYNSKI: Okay, so you
15 essentially suspended her for that period
16 subsequent to your conversation knowing that
17 she had no knowledge of this, is that correct?

18 KELLY CHARLES-COLLINS: Objection --

19 HEARING OFFICER: Okay, I sustain the
20 objection because it misstates what he said.

21 JOHN GALCZYNSKI: Okay.

22 HEARING OFFICER: Okay.

23 JOHN GALCZYNSKI: Um --

24 KEVIN KIDD: Can I clarify?

25 KELLY CHARLES-COLLINS: No.

1 HEARING OFFICER: Next question, sir.

2 JOHN GALCZYNSKI: My next question is, um
3 why then, did you suspend her --

4 KELLY CHARLES-COLLINS: Objection,
5 misstates the facts.

6 HEARING OFFICER: No, uh --

7 JOHN GALCZYNSKI: How did I make a
8 misstatement of fact?

9 HEARING OFFICER: Okay, uh --

10 KELLY CHARLES-COLLINS: Because he did
11 not suspend her he never testified to that.

12 HEARING OFFICER: Okay, were you involved
13 in the suspension?

14 KEVIN KIDD: No, I sent her home for her
15 to come back and talk with the Store Manager.
16 I sent her home because of the use of
17 profanity, not for looking --

18 HEARING OFFICER: No, you sent her home -
19 - did she come back the next day?

20 KEVIN KIDD: I really don't recall, the
21 documents will probably clarify when she comes
22 back.

23 HEARING OFFICER: Okay, what I'm asking
24 you regarding the suspension.

25 KEVIN KIDD: Uh-hmm.

1 HEARING OFFICER: She was administered
2 were you involved in?

3 KEVIN KIDD: No, I did not administer
4 the --

5 HEARING OFFICER: Okay, then we're going
6 to move on --

7 JOHN GALCZYNSKI: Okay, um performance
8 wise what -- what issues did you have with
9 Ms. Barnes aside from what you've just
10 covered?

11 KEVIN KIDD: I'd have to look at her
12 documentation --

13 JOHN GALCZYNSKI: So, nothing essentially
14 that -- that rules your mind over --

15 KEVIN KIDD: Right, I know we had -- I
16 don't want to misstate, but I know we had
17 customer complaint issues.

18 JOHN GALCZYNSKI: You don't know that?

19 KEVIN KIDD: I have the documentation I
20 could go through what exactly -- I deal with
21 hundreds of Employees.

22 JOHN GALCZYNSKI: I understand that.

23 HEARING OFFICER: Okay, wait, uh what
24 you're saying is you don't have any specifics,
25 is that correct?

1 KEVIN KIDD: I know, but I don't -- I
2 mean she was counseled for, uh I mean she was
3 coached for the Capri Suns. I know of her
4 being counseled by Tom, you know, uh the
5 situations with the customers.

6 Um more than one occasion I know she was
7 either counseled, coached or both with
8 profanity to another Manager.

9 If I have the documentation I could -- I
10 just don't want to speak of something I don't
11 speak of something I don't --

12 HEARING OFFICER: Okay, any other
13 questions?

14 JOHN GALCZYNSKI: Yes, um you indicated
15 specific incidents this Capri Suns. Perhaps
16 you could, uh elaborate on this incident
17 specifically to the best of your recollection
18 what was the complaint?

19 KEVIN KIDD: The complaint was -- was a
20 customer you said she was very uncomfortable
21 because --

22 HEARING OFFICER: Okay, he's testifying
23 to what the customer complained as I told you,
24 uh told Ms. Collins that --

25 JOHN GALCZYNSKI: Okay, let me --

1 HEARING OFFICER: -- it's hearsay. I
2 can't make a Decision on it, so it's a waste
3 of time to go into.

4 JOHN GALCZYNSKI: All right, what I'm
5 asking is what did she say to her, Amy Barnes
6 the Claimant after this incident with the
7 customer?

8 HEARING OFFICER: Go ahead, sir.

9 KEVIN KIDD: You asked me what happened
10 to --

11 HEARING OFFICER: Just answer it again --

12 KEVIN KIDD: Answer it again, okay, um we
13 brought Amy Barnes into the office and told
14 her we had a customer complaint, um --

15 JOHN GALCZYNSKI: What was the complaint?

16 KELLY CHARLES-COLLINS: Objection he --

17 HEARING OFFICER: I mean, uh if it comes
18 -- he testified to what the customer told him
19 the customer isn't here as a witness it's
20 hearsay.

21 JOHN GALCZYNSKI: All right, um what
22 happened?

23 KELLY CHARLES-COLLINS: Question asked
24 and answered.

25 HEARING OFFICER: I'm going to say I'm

1 not going to allow that question because it's
2 vague.

3 JOHN GALCZYNSKI: Okay, in response to
4 whatever complaint this was what did you say
5 or do or what rule did you accuse Ms. Barnes
6 of breaking?

7 KEVIN KIDD: It was a coaching session.
8 I didn't accuse her of breaking any rules.
9 What I did was I told her that what I was
10 informed that the customer felt very
11 uncomfortable because of a remark that they
12 felt it not appropriate trying to make
13 purchases.

14 Ms. Barnes said she was just trying to
15 bring information to her and help her. I told
16 her that's not our role, it was to check the
17 customers out, tell them have a good day and
18 ask them if we can help them find anything
19 else. That we should limit conversations to
20 the scope of what asked.

21 JOHN GALCZYNSKI: When did you become
22 aware that Ms. Barnes had filed for or
23 requested, uh a transfer?

24 KEVIN KIDD: Not at all.

25 JOHN GALCZYNSKI: Not at all.

1 KEVIN KIDD: If I had the documentation I
2 could testify to the dates, but I don't --

3 JOHN GALCZYNSKI: Um did you at any time
4 withhold knowledge during this, uh end of
5 October period that in effect a transfer had,
6 um been approved and Ms. Barnes was not to be
7 notified?

8 KELLY CHARLES-COLLINS: Objection, asked
9 and answered.

10 KEVIN KIDD: Aware of the transfer went
11 through?

12 JOHN GALCZYNSKI: Okay --

13 HEARING OFFICER: Okay.

14 JOHN GALCZYNSKI: -- I would like to
15 introduce that email, um relating to the fact
16 that a transfer had gone through --

17 HEARING OFFICER: Okay, yeah, but was he
18 aware of it? That's why I asked you before --

19 JOHN GALCZYNSKI: Okay, are you cc'd for
20 Store Manager on emails relating to transfers?

21 KEVIN KIDD: No.

22 KELLY CHARLES-COLLINS: You have the
23 email -- the email is in record, so.

24 HEARING OFFICER: And he's saying it's
25 not so go to the next question.

1 JOHN GALCZYNSKI: Okay, so were you in
2 any point notified by Mr. Sayers or any other
3 associate or management member that a, uh
4 transfer had in fact gone through and you were
5 aware of it at that time?

6 (gap in recording 147:45-147:49)

7 HEARING OFFICER: Any other questions,
8 sir?

9 JOHN GALCZYNSKI: Do you have access to
10 Mr. Sayers' email account?

11 KEVIN KIDD: Yes.

12 JOHN GALCZYNSKI: How often do you access
13 Mr. Sayers', Tom Sayers' email account?

14 (gap in recording 148:01-148:03)

15 JOHN GALCZYNSKI: How often is that?

16 KEVIN KIDD: On days off and when he's on
17 vacation.

18 JOHN GALCZYNSKI: Was Mr. Sayers off in
19 the course of the post suspension period?

20 KELLY CHARLES-COLLINS: Objection calls
21 for speculation.

22 HEARING OFFICER: Okay.

23 KEVIN KIDD: I don't know.

24 JOHN GALCZYNSKI: Okay --

25 HEARING OFFICER: Okay --

1 JOHN GALCZYNSKI: -- you act as Manager
2 in charge when Mr. Sayers is not present?

3 KEVIN KIDD: Yes.

4 JOHN GALCZYNSKI: Are you required -- are
5 you required to be charged with Mr. Sayers'
6 knowledge, um of -- of what the, uh status is
7 of the store during that period?

8 KEVIN KIDD: No, my job is to manage day
9 to day operations.

10 JOHN GALCZYNSKI: So, when you say that
11 it's on an as needed basis that you access
12 Mr. Sayers' account after, um October, uh
13 after the suspension date, I believe it was
14 October 24th, did you access in the next, uh
15 10 days did you access Mr. Sayers --

16 KEVIN KIDD: Let's clarify what access
17 means.

18 JOHN GALCZYNSKI: Look at his email?

19 KEVIN KIDD: Look in his Inbox.

20 JOHN GALCZYNSKI: Okay, and did you in
21 looking at Mr. Sayers's Inbox view the email
22 relating to, um -- um Amy Barnes' transfer?

23 KEVIN KIDD: Knowledge of that, it was
24 not in an email.

25 JOHN GALCZYNSKI: Okay, let's go to, um

1 after the suspension period, um after the --
2 the suspension ended, um -- um Ms. Barnes was
3 to appear on, um November 3rd or November 4th
4 what did you -- you -- do you recall the date?

5 KEVIN KIDD: I don't recall the date.

6 JOHN GALCZYNSKI: Were you present at
7 that point?

8 KEVIN KIDD: That was the date she
9 resigned, yes.

10 JOHN GALCZYNSKI: Okay, did you direct
11 Ms. Barnes to write a letter?

12 KEVIN KIDD: I suggested that she
13 document her resignation --

14 JOHN GALCZYNSKI: Can you use your words
15 that you said at the time rather than I --

16 KEVIN KIDD: I --

17 KELLY CHARLES-COLLINS: Objection --

18 HEARING OFFICER: Okay -- okay, now,
19 state your question again, please?

20 JOHN GALCZYNSKI: Can you use the words
21 rather than a conclusion, um as to what you
22 said to Ms. Barnes relating to the issuance of
23 the letter of, um separation?

24 KELLY CHARLES-COLLINS: Objection, he
25 answered the question. He doesn't like the

1 answer, but he answered the question.

2 HEARING OFFICER: Okay, I'm going to
3 allow the answer, go ahead, do you remember
4 what you said to her regarding the letter
5 of resignation?

6 KEVIN KIDD: Word for word --

7 JOHN GALCZYNSKI: Yes, close as exact to
8 possible.

9 (gap in recording 150:32-150:35)

10 JOHN GALCZYNSKI: Did you write the email
11 that, uh summarized that --

12 KELLY CHARLES-COLLINS: Objection --

13 HEARING OFFICER: What email?

14 JOHN GALCZYNSKI: There was email, uh
15 subsequent to that which indicates that --

16 HEARING OFFICER: You're talking about
17 after the separation?

18 JOHN GALCZYNSKI: Pardon?

19 HEARING OFFICER: You're talking about
20 after the date of separation?

21 JOHN GALCZYNSKI: Yes, there was an email
22 that he --

23 HEARING OFFICER: I --

24 JOHN GALCZYNSKI: -- directed her to
25 write it. I believe those were the exact

1 words --

2 HEARING OFFICER: Did -- did you ask her
3 to write the letter of resignation?

4 KEVIN KIDD: No, I suggested to her, if
5 you want to you can document -- I told her it
6 would probably be best if you put it on paper.

7 JOHN GALCZYNSKI: Why would the email
8 show something different than what --

9 KELLY CHARLES-COLLINS: What, uh --

10 HEARING OFFICER: I don't --

11 KELLY CHARLES-COLLINS: Objection he's
12 referring to an email that's not in
13 evidence --

14 JOHN GALCZYNSKI: Okay.

15 HEARING OFFICER: What email is it?

16 JOHN GALCZYNSKI: Introduce into evidence
17 this email right here --

18 HEARING OFFICER: Well, what email is it?

19 JOHN GALCZYNSKI: Hang on one second, it
20 is sent Wednesday, November 3rd, 2010 at
21 9:28 a.m. to Matt Crawley, Susan Says,
22 Steve McConnel.

23 KELLY CHARLES-COLLINS: Okay, is -- I'm
24 going to object, Mr. Kidd is not on that email
25 is he?

1 JOHN GALCZYNSKI: That's correct --

2 KELLY CHARLES-COLLINS: So, therefore,
3 I'm going to ask that --

4 HEARING OFFICER: Let me find the email
5 first, okay, can we just -- November 2nd --

6 KELLY CHARLES-COLLINS: Let me help you.

7 HEARING OFFICER: No, I think I've got it
8 right here.

9 JOHN GALCZYNSKI: November 3rd.

10 HEARING OFFICER: That's what I'm -- I'm
11 assuming they're in order is what I'm --

12 JOHN GALCZYNSKI: Okay.

13 HEARING OFFICER: -- okay, that's why I
14 said I was -- November -- he's not on this
15 email so I'm not going to allow the question.

16 JOHN GALCZYNSKI: All right.

17 HEARING OFFICER: Okay, next question.

18 JOHN GALCZYNSKI: My next question is how
19 did you --

20 AMY E. BARNES: He saw the email --

21 KELLY CHARLES-COLLINS: Can I ask that
22 you --

23 AMY E. BARNES: -- told him.

24 KELLY CHARLES-COLLINS: I'm going to ask
25 that you direct Ms. Barnes --

1 HEARING OFFICER: Okay -- okay,
2 Ms. Barnes, if you're going to have a
3 representative he's got to be your
4 representative. I can't have both
5 of you --

6 AMY E. BARNES: Okay, that's fine --

7 HEARING OFFICER: -- acting as a
8 representative, okay -- okay.

9 JOHN GALCZYNSKI: Okay, um how did, um
10 did you accept this letter from Ms. Barnes?

11 KEVIN KIDD: Did I accept it?

12 JOHN GALCZYNSKI: Yeah, in other words
13 there was a handwritten letter and how did you
14 accept it? Did somebody hand it to you, did
15 she hand it to you? How did you accept it?

16 KEVIN KIDD: I don't recall. She might
17 have handed it to Tom.

18 JOHN GALCZYNSKI: Was Tom there on that
19 day?

20 KEVIN KIDD: Yes.

21 JOHN GALCZYNSKI: Was he there at that
22 time?

23 KEVIN KIDD: Yes.

24 JOHN GALCZYNSKI: Um did Tom ask you
25 while he was there to deal with Ms. Barnes

1 relating to this letter?

2 KEVIN KIDD: No.

3 JOHN GALCZYNSKI: So, it -- it indicates
4 that --

5 KELLY CHARLES-COLLINS: I'm going to
6 object to --

7 HEARING OFFICER: Now, he hasn't even
8 said the question, ma'am, you have to let him
9 give the question and then, you can object or
10 not object.

11 JOHN GALCZYNSKI: It indicates in this
12 email by Tom Sayers that we had her write a
13 resignation letter. My question -- I'm sorry
14 are you coaching the witness?

15 KELLY CHARLES-COLLINS: No, I was telling
16 him not to answer.

17 HEARING OFFICER: Okay, all right, that's
18 a statement that's not a question, are you
19 forming in a question --

20 JOHN GALCZYNSKI: Okay.

21 HEARING OFFICER: -- please?

22 JOHN GALCZYNSKI: Yes, I am, did you read
23 this email?

24 KEVIN KIDD: No, I didn't know that email
25 existed.

1 JOHN GALCZYNSKI: Did you write the
2 email?

3 KEVIN KIDD: I didn't --

4 JOHN GALCZYNSKI: I understand that,
5 did you --

6 HEARING OFFICER: If he didn't know it
7 existed how can he write the email?

8 KEVIN KIDD: No, I did not.

9 JOHN GALCZYNSKI: All right, did
10 Tom Sayers write this email?

11 KEVIN KIDD: Objection, calls for --

12 HEARING OFFICER: Okay -- okay, sir, I'm
13 not going to allow this question.

14 JOHN GALCZYNSKI: Okay.

15 HEARING OFFICER: Because he has no
16 knowledge of it.

17 JOHN GALCZYNSKI: So --

18 HEARING OFFICER: Move on to the next
19 question or we're going to --

20 JOHN GALCZYNSKI: Did you ask Ms. Barnes
21 to write this letter just like it says here --

22 KELLY CHARLES-COLLINS: Objection, asked
23 and answered.

24 KEVIN KIDD: I'm going to -- |

25 HEARING OFFICER: Okay, he's answered

1 that and I'm going to sustain the objection
2 because he's answered --

3 JOHN GALCZYNSKI: Okay.

4 HEARING OFFICER: -- more than once now.

5 JOHN GALCZYNSKI: Okay, um --

6 KEVIN KIDD: Let me --

7 KELLY CHARLES-COLLINS: No, if he
8 sustains that means no.

9 KEVIN KIDD: Okay.

10 JOHN GALCZYNSKI: Um did you in any way
11 say or do, uh something that would indicate to
12 Ms. Barnes that she was required to, um write
13 this email?

14 (gap in recording 155:08-155:13)

15 JOHN GALCZYNSKI: What did you say
16 exactly?

17 KELLY CHARLES-COLLINS: Objection, asked
18 and answered.

19 HEARING OFFICER: Okay, I sustain the
20 objection because he's answered that on
21 multiple times --

22 JOHN GALCZYNSKI: Okay.

23 HEARING OFFICER: -- at this point, any
24 other questions for him, sir?

25 JOHN GALCZYNSKI: Um yes, did you feel

1 that, um Mr. Sayers, um and Ms. Barnes did not
2 get along or that there were, um motivations
3 for Ms. Barnes seeking a transfer?

4 KELLY CHARLES-COLLINS: Objection, calls
5 for speculation --

6 HEARING OFFICER: Okay, speculation, I'm
7 not going to allow the question.

8 JOHN GALCZYNSKI: Okay, all right.

9 HEARING OFFICER: It would just be his
10 opinion I don't think it would be relevant.

11 JOHN GALCZYNSKI: Okay, at the time of
12 this resignation did -- did you see that, uh,
13 um Ms. Barnes was, um pushed in any way from
14 your point of view?

15 (gap in recording 156:02-156:06)

16 JOHN GALCZYNSKI: Um did you do anything
17 that would threaten her or, um otherwise
18 intimidate her into writing this letter?

19 (gap in recording 156:14-156:16)

20 JOHN GALCZYNSKI: Okay, uh I have no
21 further questions.

22 HEARING OFFICER: Okay, at this point I'm
23 going to have to end the hearing today. And I
24 apologize, but I'm running out of time.

25 I'm sorry we're not going to be able to

1 finish today and we're at a stopping point. I
2 mean I -- I am not the Lord I can't --

3 KELLY CHARLES-COLLINS: No, I know --

4 HEARING OFFICER: -- perform miracles,
5 okay? So, uh I'm going to stop it at this
6 time. What I'm going to do I'm going to ask
7 each party do you have any not available
8 dates? And I'll begin with the Employer,
9 ma'am, I'll ask you first, um Ms. Collins?

10 KELLY CHARLES-COLLINS: I'm not sure.

11 HEARING OFFICER: Okay, yeah, I'll have
12 to let me bring --

13 KELLY CHARLES-COLLINS: Wait, can I ask I
14 don't know how the --

15 HEARING OFFICER: Go ahead.

16 KELLY CHARLES-COLLINS: Is it possible
17 that we can schedule this for like a whole
18 day?

19 HEARING OFFICER: We may have to, ma'am.

20 KELLY CHARLES-COLLINS: Because --

21 HEARING OFFICER: I may have to ask for
22 that because I -- I don't -- I do not have the
23 authority to --

24 KELLY CHARLES-COLLINS: Right.

25 HEARING OFFICER: -- that, but I can ask

1 for it and --

2 KELLY CHARLES-COLLINS: And the only
3 reason I say that was because last time with
4 less witnesses we did probably about
5 five hours of testimony.

6 HEARING OFFICER: Yeah.

7 KELLY CHARLES-COLLINS: With less than
8 the number of witnesses we have now and we
9 keep bringing all these management people out
10 of our stores and this is about the
11 seventh time --

12 HEARING OFFICER: I understand, I can ask
13 -- I don't have the -- I'm not the one that
14 grants that or not --

15 KELLY CHARLES-COLLINS: But if we
16 could --

17 HEARING OFFICER: I'll ask for it, okay?

18 KELLY CHARLES-COLLINS: Okay.

19 HEARING OFFICER: I have no problem with
20 asking for it. I want to finish this as much
21 as both parties want to finish this.

22 AMY E. BARNES: You're free -- you're
23 free.

24 KELLY CHARLES-COLLINS: Let me see,
25 June 30th, July 7th, July 15th through

1 the 21st, July 27th. I think that's it for now
2 I don't have my work calendar on here, but
3 I'll just, uh no, that's what I know for now.
4 Once I get back I'll --

5 HEARING OFFICER: Can I have you -- you
6 have a notice right there --

7 KELLY CHARLES-COLLINS: Uh-hmm.

8 HEARING OFFICER: -- if you'll put just
9 Region 2 with the Docket Number --

10 KELLY CHARLES-COLLINS: Okay.

11 HEARING OFFICER: -- and instead of
12 bringing all these witnesses back and having
13 to go --

14 KELLY CHARLES-COLLINS: Okay.

15 HEARING OFFICER: -- if you'll email me
16 not available dates with that Docket Number
17 and that region number within 24 hours I'll
18 let you do it that way --

19 KELLY CHARLES-COLLINS: Okay, thank you,
20 we'll do that.

21 HEARING OFFICER: Okay, sir --

22 JOHN GALCZYNSKI: I'm going to request to
23 be cc'd on that as well just so that I know
24 that --

25 HEARING OFFICER: No, you'll be -- I'm

1 not going to require them to cc you.

2 JOHN GALCZYNSKI: Okay.

3 HEARING OFFICER: You'll -- I'm going to
4 ask you as well if you have any not
5 available dates?

6 JOHN GALCZYNSKI: Yes, the fifth of July.

7 HEARING OFFICER: July 5th, okay, and any
8 -- any other dates, sir, do you have any --

9 INTERPRETER CELIO BEST: I don't --

10 HEARING OFFICER: -- do you have any
11 yourself? The Interpreter do you have any
12 not --

13 INTERPRETER CELIO BEST: Oh, I don't have
14 any -- right now, uh I don't know my schedule.

15 HEARING OFFICER: Uh-hmm.

16 INTERPRETER CELIO BEST: But we have
17 another person that can --

18 HEARING OFFICER: Okay -- okay.

19 INTERPRETER CELIO BEST: -- if you want
20 specifically me then, I can send you --

21 HEARING OFFICER: I think it would -- I'd
22 prefer it to be --

23 INTERPRETER CELIO BEST: The same person?

24 HEARING OFFICER: The same person

25 INTERPRETER CELIO BEST: I can send you

1 available dates --

2 HEARING OFFICER: Hold on, uh I've got
3 another copy of this somewhere.

4 INTERPRETER CELIO BEST: Email?

5 HEARING OFFICER: Yeah, you can email --

6 INTERPRETER CELIO BEST: Okay, sure --
7 sure.

8 HEARING OFFICER: Okay, I'll make another
9 copy of that, okay?

10 INTERPRETER CELIO BEST: Okay, sure.

11 HEARING OFFICER: And I'm sorry about
12 this for both sides. But it's out of my
13 control so we'll meet again.

14 KELLY CHARLES-COLLINS: Okay.

15 HEARING OFFICER: Okay.

16 JOHN GALCZYNSKI: Certainly.

17 INTERPRETER CELIO BEST: Thank you.

18 KELLY CHARLES-COLLINS: Thank you.

19 JOHN GALCZYNSKI: Thank you.

20 INTERPRETER CELIO BEST: Can I ask a
21 favor, uh or not a favor --

22 HEARING OFFICER: Will y'all stay I don't
23 want anything said --

24 KELLY CHARLES-COLLINS: Okay.

25 HEARING OFFICER: -- what?

1 INTERPRETER CELIO BEST: When we done, uh
2 the paper that we need to sign I just need you
3 to put it -- I need to pull up my email --

4 HEARING OFFICER: I don't have -- I'm not
5 allowed -- you can go out in the lobby and see
6 if you can use their --

7 INTERPRETER CELIO BEST: They have some
8 for the --

9 HEARING OFFICER: Yeah, you can ask them
10 if they'll let you use it out there, but I
11 can't --

12 INTERPRETER CELIO BEST: Okay, that will
13 be fine if they'll let me use it I'll just
14 pull it up.

15 HEARING OFFICER: Okay, and --

16 INTERPRETER CELIO BEST: That I was,
17 actually, here.

18 HEARING OFFICER: -- you can ask the
19 people up front if they'll bring it back to me
20 and I'll sign it.

21 INTERPRETER CELIO BEST: Okay, sure that
22 will be great.

23 HEARING OFFICER: Okay -- okay, they'll
24 let you that's fine, I can't let you use my
25 computer.

1 INTERPRETER CELIO BEST: Okay, that's
2 fine, I can understand that.

3 HEARING OFFICER: Okay.

4 JOHN GALCZYNSKI: Does that
5 conclude this --

6 HEARING OFFICER: Yes, sir, y'all have a
7 nice day.

8 KELLY CHARLES-COLLINS: Thank you -- you
9 too.

10 INTERPRETER CELIO BEST: You too.

11 HEARING OFFICER: Thank you, have a nice
12 day. Y'all have a nice day.

13 INTERPRETER CELIO BEST: All right, I'll
14 have to bring it back to you.

15 HEARING OFFICER: Well, no, when you ask
16 them up front to tell me I'll come out and
17 I'll -- I'll sign it.

18 INTERPRETER CELIO BEST: Okay, sure,
19 okay, uh also your, uh name on here, also
20 because I'll look at this later on and I'll
21 go, uh what's his name again? Thank you, sir.

22 HEARING OFFICER: Uh-hmm.

23 INTERPRETER CELIO BEST: Did you -- did
24 you have a certain day that was available for
25 you?

1 HEARING OFFICER: No, I'll need not
2 available dates you can email that --

3 INTERPRETER CELIO BEST: Okay, sure.

4 HEARING OFFICER: Either way.

5 INTERPRETER CELIO BEST: All right,
6 thank you.

7 HEARING OFFICER: All parties out of the
8 office. It's 3:37 p.m. going off record.

9 HEARING CONCLUDED